

Procurement Handbook

OVERVIEW

The whole procurement process covers a wide range of activities from management and analysis of needs; research for market information; determination of procurement strategy; tendering process; evaluation of offer and award of contract; contract management and performance monitoring; to review and identification of improvement measures for future procurement exercises. The complete process will be referred to as the procurement life cycle in this handbook.

Procurement Lifecycle



The processes from tendering to contract management are governed by the Stores and Procurement Regulations (SPRs), which may be supplemented by Financial Circulars (FCs), Financial Services and the Treasury Bureau Circular Memoranda (FSTBCM) and Government Logistics Department (GLD) Circulars. This handbook highlights main provisions in SPRs and provides guidelines which are applicable to most common types of goods, services and revenue tenders. It also includes basic information about the planning stage of the procurement life cycle and illustrates how effective demand management and market research could help identify an effective procurement strategy. Guidance is also given on how results from contract review can be fed back into the planning stage to complete the procurement life cycle.

This handbook is designed for use by professional procurement officers and officers who are involved in the procurement of goods, services (other than construction and engineering services) and revenue contracts in bureaux and departments (B/Ds). Officers who are responsible for leading the procurement team and determining procurement strategies to support the business objectives of B/Ds may focus on Parts I & II of the handbook, in which issues on procurement management, spend analysis, demand management and market analysis are discussed. Officers involved in the operational aspects of the procurement activities including tendering, execution of contract and contract management may refer to the specific parts of the handbook for guidance relating to their duties.

This handbook is not a substitute for legal or professional advice. Consultation with relevant procurement, legal and technical staff should be made wherever appropriate. When working with this handbook, compliance with the relevant updated SPRs, internal guidelines, policies or procedures should be observed. Should there be any discrepancy between this handbook and the prevailing SPRs / FCs / FSTBCMs and GLD Circulars, the latter must be followed.

Government Logistics Department
July 2021

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PART I	GENERAL ISSUES
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Issues

- Government Procurement Policy and Principles
- Procurement Management
- Segregation of Duties
- Declaration of Interest
- Application of Tender Procedures
- Classification of Tender Information
- Confidentiality of Tender Process
- Tender Boards / Committees
- Multilateral Agreements and Free Trade Agreement on Government Procurement
- Keeping of Procurement Statistics
- Handling of Complaints in relation to Tenders

1. Government Procurement Policy and Principles

- 1.1 The policy of government procurement is to obtain goods and services at the best value for money in a publicly accountable manner. *SPR 106*
- 1.2 The policy of government procurement is underpinned by the following principles: *SPR 109*
- (a) open and fair competition;
 - (b) transparency;
 - (c) pro-innovation; and
 - (d) integrity.
- 1.3 Controlling Officers (COs) may develop departmental instructions to guide public officers in the department in conducting government procurement, provided that such instructions comply with SPRs and have been approved by the Director of Government Logistics (DGL). *SPR 126*

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- 1.4 Within the departmental procurement system, there should be institutional safeguards designed with adequate checks and balances as well as clear segregation of roles and duties.

2. Procurement Management

2.1 Organisation Structure

B/Ds may consider the following options in establishing the organisation structure for performing the procurement functions:

- (a) fully centralised with all procurement activities handled in the Headquarters; or
- (b) partially centralised with some of the procurement activities handled in the Headquarters; or
- (c) fully decentralised with each division / section / unit delegated with the authorities to handle its own procurement activities.

2.2 Personnel Capability

- (a) Procurement is a distinct function and should be headed by an officer at a senior level with a clearly defined role, reporting line and set of responsibilities.
- (b) The head of procurement should focus on strategic procurement activities which constitute the major expenditure items of B/D and provide professional advice on opportunities for improving the efficiency and cost-effectiveness of the procurement function, especially when demand cuts across divisions and collaborative efforts are needed from different divisions of B/D.

- (c) Purchasing and stores management functions should normally be performed by Supplies Grade staff. COs should make available sufficient Supplies Grade staff to discharge these functions in an appropriate manner.
- (d) B/Ds should examine regularly whether the current establishment and strength of Supplies Grade staff are commensurate with the prevailing / foreseeable workload and value of purchase.
- (e) B/Ds with no Supplies Grade staff on their establishment should critically review if the non-Supplies Grade staff have the required competency to handle procurement activities. If not, measures have to be taken to build up the capacity and capability of the personnel involved in performing the procurement function.

2.3 Overall Monitoring of Procurement Performance for Different Categories of Goods / Services

- (a) Ongoing monitoring and review of procurement performance against key result areas which help identify B/D's strengths and weaknesses and pinpoint areas of challenges for continuous improvement. Examples of performance indicators include:
 - (i) Level of market competition
 - (ii) Length of procurement cycle
 - (iii) Total cost of acquisition
 - (iv) Procurement of goods and services meeting user's needs
 - (v) Suppliers' interest in bidding for government projects (supplier participation)

(b) Review of Concentration Risk

*FSTBCM No.
3/2019 & 4/2019*

- (i) Conduct a concentration risk analysis on the high value and mission-critical contracts which are essential to the operation of B/D.
- (ii) For information technology (IT) contracts, refer to the risk assessment scheme promulgated by Office of the Government Chief Information Officer (OGCIO).
- (iii) Consider if there is over reliance on one or a few contractors for the delivery of such goods or services.
- (iv) In the light of the findings, start planning and put in place risk containment measures including, but not limited to, the following:
 - ✧ implementing an effective contractor performance monitoring system;
 - ✧ arranging progress meeting with contractors;
 - ✧ demanding progress report from contractors;
 - ✧ reducing the risks of default;
 - ✧ preparing a contingency plan;
 - ✧ exploring alternative sources of supply; and
 - ✧ promoting competition.
- (v) B/Ds should consider adopting the following measures to enhance competition without evading the relevant financial limits stipulated in SPRs:

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- ✧ split large contracts into smaller ones to increase the chance of having medium and small companies in participating in the tenders;
 - ✧ stagger the tender exercises so that the contracts could be let in phases;
 - ✧ remove essential requirements on tenderer's experience and relax unnecessary essential requirements in tenders as far as possible to enhance competition;
 - ✧ remove assessment criteria and/or reduce the weighting of assessment criteria which are inherently in favour of the existing contractor; and
 - ✧ restrict the number of contracts to be awarded to the same tenderer if the tenders involve more than one contract. If the contracts are subject to the Agreement on Government Procurement of the World Trade Organisation (WTO GPA), B/Ds could explore the possibility for imposing the said restriction rule by justifying the proposed restriction in accordance with the conditions for exceptions under the relevant WTO GPA provisions.

2.4 Strategic Review and Assessment of Effectiveness of the Procurement System

(a) Strategic Review

- (i) Normally at a global level covering a group of contracts of a similar nature rather than individual contracts.

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- (ii) Focus on whether the intended outcomes and benefits are achieved rather than the operational aspects of individual contracts.
 - (iii) Involve key stakeholders (e.g. user, technical adviser, frontline supervisor, contract manager).
 - (iv) Conduct review on the following aspects:
 - ✧ costs and benefits analysis against outcomes;
 - ✧ whether the intended outcomes have been delivered. If yes, are they sustainable?
 - ✧ ways of maximising benefits and minimising cost and risk;
 - ✧ business and user satisfaction;
 - ✧ issues to be addressed in contract execution; and
 - ✧ lessons learned from the existing procurement approach and opportunities for improvement.
 - (v) Consider needs of the B/D and its end users / stakeholders and recommend improvements for the procurement initiative / strategy.
- (b) Assessment of the Effectiveness of the Procurement System

B/Ds should demonstrate how the key areas of challenges in the procurement lifecycle are addressed in assessing the effectiveness of the procurement system. The assessment should cover how B/D plans and conducts its procurement activities on the one hand, and measures the quality of goods / services delivered and the outcomes for its end users on the other. Examples are:

Needs & Governance

- ✧ Does the department provide clear leadership on procurement, e.g. a clear structure on delegation and authority for procurement activities?
- ✧ Is there a mechanism to ensure that non-Supplies Grade staff who have the authority to procure have the appropriate competency levels?
- ✧ Are there regular reviews on the capacity and capability of the personnel involved in performing procurement functions?

Demand Management & Supply Market Analysis

- ✧ Is there effective demand management (see Part II) early in the procurement process?
- ✧ How is supply market analysis, such as understanding whole life cost, benchmarking price, quality, number of potential suppliers in the market, and/or trade practice, used in devising the procurement strategy?
- ✧ Are specifications designed to ensure value for money (VFM) and maximise value (e.g. outcome specification, whole life costing)?
- ✧ Are mechanisms in place to encourage entrance of new suppliers?

Procurement Strategies & Cross-divisional Collaboration

- ✧ How the procurement strategies for critical purchases are worked out?
- ✧ Who are responsible for working out the strategies?
- ✧ To what extent is the requirement developed by a cross functional team when demand crosses divisional / sectional boundaries?

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- ✧ Do post procurement reviews take place to identify lessons learnt and to determine whether VFM was achieved?
 - ✧ How effective is the procurement strategy?

Contract and Supplier Management

- ✧ How are contracts and suppliers managed?
- ✧ Does B/D manage supply risk during the term of the contract? Have contingency plans been put in place to manage the risk, such as contract default and/or discontinuity of supply, for critical purchases?
- ✧ Do suppliers have an opportunity to provide feedback to B/D during the term of the contract?
- ✧ Are effective contract management processes in place? Are there quality assurance measures to ensure the quality of the goods/services to be delivered?

3. Segregation of Duties

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|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| 3.1 | There must be clear segregation of roles and responsibilities to ensure the integrity of the tendering process. | <i>SPR 217</i> |
| 3.2 | COs or designated officers should agree on the segregation of duties before tenders are invited. | <i>SPR 126</i> |
| 3.3 | For tenders involving the use of a two-envelope approach, members of the tender opening team who have access to the price proposal of tender offers should not take part in the technical evaluation of the tender exercise concerned. | |
| 3.4 | Officers involved in the tender process (e.g. Supplies Grade staff) should not be appointed as Departmental Tender Committee (DTC) | |

members or participate in considering and approving the acceptance of the tenders handled by them.

3.5 There shall not be any overlapping membership between the DTC and the corresponding Tender Assessment Panel (TAP).

3.6 Officers involved in tender exercise should not approve negotiation of the tender exercise concerned.

SPR 385(d)

4. Declaration of Interest

4.1 Make declaration of interest for each tender exercise when involved in:

SPR 186

- (a) preparation of tender documentation (including marking scheme);
- (b) assessment of tenders; and/or
- (c) conduct of tender / contract negotiations.

4.2 Record and file all declarations properly.

4.3 Redeploy other staff to take the place of the public officer who has declared an interest and is considered not suitable to continue to handle the specific procurement exercise.

SPR 188(c)

4.4 Ensure that technical experts from outside the Government make declaration of interest before they are engaged under special circumstances and disqualify those experts with actual, potential or perceived conflicts of interest identified.

SPR 197

5. Application of Tender Procedures

Coverage

5.1 Tender procedures shall be followed for procurement and disposal of stores, services, construction / engineering works and other items as well as for revenue contracts, with the exceptions set out in *SPR 300(a)*.

5.2 For purchases with a value that does not exceed the quotation limits, B/Ds may still consider making the purchases through tender procedures. *SPR 221*

Determination of procurement entity

5.3 DGL is the procurement agent for stores (except vessels) with a value beyond the departmental limit specified in *SPR 220(a)*. The Director of Marine is the procurement agent of vessels. *SPR 235 and Appendix II to SPR*

5.4 For other purchases, B/Ds should arrange purchases on their own.

[N.B. the total estimated value of contracts in a tender exercise (i.e. sum of the estimated values of all items) should be used to determine whether the tender exercise should be conducted by GLD or B/D itself.]

5.5 B/Ds shall make their requests to DGL through GLD's Procurement and Contract Management System (PCMS) for procurement of stores which are neither held in unallocated stock by GLD nor covered by an existing contract let by GLD.

6. Classification of Tender Information

6.1 For all communications regarding tenders – “RESTRICTED (TENDER)”. *SPR 305*

6.2 For sensitive contract information relating to disputes, litigation, claims, etc. – “RESTRICTED”.

6.3 If disclosure of information would be prejudicial to the interest of the Government – “CONFIDENTIAL”.

7. Confidentiality of Tender Process

7.1 Leakage of tender information and outcome prematurely is a serious misconduct and is detrimental to the integrity of the tender exercise.

7.2 B/Ds shall ensure that tender evaluation details are shared on a need-to-know basis and that staff involved fully recognise the obligation to observe the strict confidentiality rules.

7.3 Where consulting firms are engaged to assist in tender evaluation, B/Ds should take extra steps to satisfy themselves that the firms and the named individuals concerned will strictly observe the confidentiality rules.

8. Tender Boards /Committees

8.1 The approving authorities for acceptance of tenders / cancellation of tender exercises are as follows: *SPR 310*

Approving authority	Chairman	Value of tender for goods / general services / revenue to be considered*
PS(Tsy) on the advice of the Central	Permanent Secretary for Financial Services and the Treasury (Treasury)	Exceeding \$60 million

Tender Board (CTB)	(PS(Tsy))	
GLD Tender Board (GLDTB)	DGL	Above \$10 million but not exceeding \$60 million
DTC	A directorate officer not lower than D2 rank in each bureau/department	Not exceeding \$10 million

**Determination of “value of tender”*

(a) The “value” refers to :

- ✧ when seeking approval for contract award, the value of the recommended tender;
- ✧ when seeking approval for adopting a marking scheme which deviates from the Standard Marking Scheme Framework (SMS Framework) for a tender, the estimated contract value of all the items included in tender exercise; or
- ✧ when seeking approval for cancellation of a tender, the estimated contract value of the tender exercise.

(b) If the tender is to be accepted on an itemised basis and contracts are to be awarded to more than one tenderer for different items, the “value” is the highest aggregate contract value which is recommended to be awarded to any one tenderer.

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- (c) If the total value of the recommended offers received from one or more bidders in a quotation exercise exceeds quotation limit, B/Ds should cancel the quotation exercise, and consider conducting an open tender exercise or review the requirements as appropriate.

9. Multilateral Agreements and Free Trade Agreement on Government Procurement

Background

- 9.1 Hong Kong acceded to the WTO GPA in 1997.
- 9.2 WTO GPA was revised in March 2012 and entered into force on 6 April 2014 (i.e. 2012 Agreement) (accessible via the link at http://fb.host.ccgo.hksarg/spr/wto/full_text_2012_agreement.pdf).
- 9.3 Government procurement is also covered in the following three (3) trade agreements, namely:
- (a) Hong Kong, China – New Zealand Closer Economic Partnership Agreement (HKC/NZ CEPA);
 - (b) Free Trade Agreement between Hong Kong, China and Chile (HKC/CL FTA); and
 - (c) Free Trade Agreement between Hong Kong, China and Australia (HKC/AU FTA). [Effective from 17.1.2020.]
- 9.4 The terms of the above trade agreements in relation to government procurement are similar to the ones stated in WTO GPA (accessible via <http://fb.host.ccgo.hksarg/spr/nzcep.htm>, http://fb.host.ccgo.hksarg/spr/fta_chile.htm and https://www.tid.gov.hk/english/ita/fta/hkaufta/files/AUHKFTA_Chapter_13.pdf).

Coverage

9.5 All entities as specified at Annex 1 (i.e. government B/Ds) to Appendix I – Hong Kong, China of the WTO GPA, Annex I to Chapter 12 of HKC/NZ CEPA, Annex 9.1 to HKC/CL FTA, and Section A of Annex 13-A to HKC/AU FTA are subject to the relevant agreements.

9.6 Procurement of goods, and those services specified at Annex 5 to Appendix I – Hong Kong, China of the WTO GPA, Annex I to Chapter 12 of HKC/NZ CEPA, Annex 9.1 to HKC/CL FTA, and Sections D and E of Annex 13-A to HKC/AU FTA; and

Estimated contract value exceeding the WTO GPA threshold of 130,000 Special Drawing Rights (for entities specified at Annex 1 to Appendix I – Hong Kong, China of the WTO GPA, Annex II to Chapter 12 of HKC/NZ CEPA, Annex 9.2 to HKC/CL FTA, and Section A of Annex 13-A to HKC/AU FTA).

9.7 Tenders for acquisition of services not specified (at Annex 5 to Appendix I – Hong Kong, China of the WTO GPA, Annex I to Chapter 12 of HKC/NZ CEPA, Annex 9.1 to HKC/CL FTA, or Section E of Annex 13-A to HKC/AU FTA), revenue tenders, consultancy services and those procurements specified at Annex 7 to Appendix I – Hong Kong, China of the WTO GPA, irrespective of value, are not covered by WTO GPA or the trade agreements.

For procurement related to construction and engineering services, B/Ds should consult Development Bureau and for procurement related to non-works consultancy, B/Ds may consult the Efficiency Office.

Threshold

- 9.8 The HK\$ equivalents of the WTO GPA thresholds shall remain effective for two years. Financial Services and the Treasury Bureau (FSTB) notifies B/Ds of the revised applicable conversion rate through the issue of a memo around December every other year and the memo is accessible via the following link:

http://fb.host.ccgo.hksarg/spr/wto/WTO_GPA_Threshold_in_HK_Dollars_for_2020_and_2021.pdf

- 9.9 For procurement exercises which are covered by WTO GPA or the related trade agreements, B/Ds shall comply with the requirements of WTO GPA and related circulars / guidelines (as may be updated from time to time).

SPR 300(b)

Frequently Asked Questions & Answers

- 9.10 “WTO Qs & As” serves as a quick reference guide on general issues relating to the revised WTO GPA and are accessible via

http://fb.host.ccgo.hksarg/spr/wto/QnA_wto_rev.pdf

10.Keeping of Procurement Statistics

WTO and non-WTO GPA Tender Statistics

- 10.1 GLD is the coordinating body for the consolidation of statistics on all procurement covered by WTO GPA for submission to the WTO Committee on Government Procurement on an annual basis.
- 10.2 B/Ds are required to provide the statistics to GLD through the ‘Tender Statistics (WTO & non-WTO) Call Return’ function in the PCMS.

10.3 The return should include information on contracts covered by WTO GPA and contracts not subject to WTO GPA:

- (a) arranged during the calendar year (excluding those arranged by GLD on behalf of B/Ds); and
- (b) approved by the relevant tender boards or DTCs [i.e. above quotation limit for goods and services].

Goods and Services Contracts awarded by B/Ds on the advice of CTB / GLDTB / DTC

10.4 B/Ds shall provide statistics on all contracts awarded on the advice of CTB / GLDTB / DTC (including those covered by WTO GPA) covering the four quarters in a calendar year to GLD through the 'Call Return Maintenance' function of PCMS.

Purchases for goods over \$50,000 and up to quotation limit

10.5 B/Ds shall forward copies of their purchase orders, together with a summary return listing all purchases over \$50,000 and up to quotation limit to GLD, at half-yearly intervals ending 31 March and 30 September.

SPR 260(c)

10.6 The summary return should be sent to GLD through the 'Call Return Maintenance' function of PCMS.

Purchases of goods and services not exceeding \$50,000

*FC No. 2/2019
or its subsequent
updates*

10.7 B/Ds shall provide statistics on purchases not exceeding \$50,000 (using / not using purchasing cards) covering the four quarters in a calendar year to GLD through the 'Call Return Maintenance' function of PCMS.

Pro-innovation procurement policy

10.8 GLD will invite reports from B/Ds on a half-yearly basis covering (but not limited to) cases where:

- (i) marking scheme has been adopted in tender evaluation;
- (ii) marking scheme has not been adopted in tender evaluation;
- (iii) single tendering, restricted tendering or direct engagement has been adopted; and
- (iv) for the service contracts that rely heavily on the engagement of non-skilled workers, information on employment and labour benefits.

11. Handling of Complaints in relation to Tenders

SPR 160

Channels of Complaints

11.1 Complaints about the process or result of a procurement exercise may be made to :

- (a) the procuring department;
 - (b) the relevant tender board / consultants selection board;
 - (c) the Office of the Ombudsman;
 - (d) the Independent Commission Against Corruption (for suspected corruption cases);
- or

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- (e) the Review Body on Bid Challenges (for procurements covered by WTO GPA, HKC/NZ CEPA, HKC/CL FTA and HKC/AU FTA).

Procedures

11.2 The CO of the procuring department should **personally** ensure that the complaint is to be handled in an impartial and timely manner. If a substantive reply could not be made within ten (10) working days, an interim reply should be sent to the complainant. All complaints and the substantive replies should be reported to the relevant tender board or consultants selection board.

SPR 160(c)

11.3 If the CO has been personally involved in the tender exercise and an apparent conflict of interest may arise, he should refer the complaint to the relevant tender board or consultants selection board (depending on the value and the nature of procurement) for consideration after investigation by his department.

The CO or his designated directorate officer should present the complaint, the outcome of the investigation and recommendations on way forward to the relevant tender board. The relevant tender board will decide on how the complaint should be taken forward.

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- 11.4 As a general rule, officers with any real or perceived conflict of interest involvement should be avoided in the investigation of a complaint. The review team could seek input from those officers who were involved in the tender evaluation and compliance assessment (including the preparation of technical specifications) as and when necessary. If it is indeed necessary for some officers involved in the tender evaluation and compliance assessment to participate in the review team for operational reasons, they must not form the majority in the team.
- 11.5 For detailed procedures in handling bid challenges against cases subject to WTO GPA, HKC/NZ CEPA, HKC/CL FTA and HKC/AU FTA, please refer to the “Rules of Operation of the Review Body on Bid Challenges” which can be viewed at the Trade and Industry Department’s website.
- 11.6 B/D’s should make reference to *SPR 160* in drawing up internal guidelines for handling complaints in relation to tender exercises.

PART II	PLANNING
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Tasks

- Demand Management
- Market Research
- Project Initiation
- Drawing up Specifications and Requirements
- Tender Strategies

1. Demand Management

Detailed procurement planning with realistic forecast on future demand are keys to procurement strategy development.

Spend Analysis

- 1.1 Historic procurement spend data should be used to support procurement decision.
- 1.2 B/Ds should use the data collected to promote collaboration between different business units / end users and consolidation of logical grouping of common and repetitive procurement of goods and services under their purview. Such consolidation / grouping of spend categories may increase its bargaining power and reduce duplication of work.
- 1.3 In-depth spend analysis helps identify:
 - (a) business units buying the same or similar goods / services for consolidation of requirements;
 - (b) importance of the goods / service to B/D's operation and the relative risks associated

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- with any delay / suspension of supply;
 - (c) the relative power of the buyer / supplier in the market; and
 - (d) the attractiveness of the business to the potential supplier.

1.4 Suggested areas for spend analysis are:

- (a) total expenditure and volume;
- (b) expenditure by commodity / service;
- (c) expenditure by division or region;
- (d) expenditure by supplier;
- (e) profile of suppliers (large enterprises, small and medium-sized enterprises (SMEs) etc.); and
- (f) future demand projections.

Demand Management

1.5 B/Ds should understand and align their requirements with the capabilities of the supply market, i.e. adjusting demand to cope with the market condition. This involves the coordination of procurement activities such as the use of procurement data, demand forecasting and planning, reducing variability and increasing flexibility in demand. GLD will regularly coordinate the publication of government procurement plans (i.e. Forecast of Major Purchases in the next 24 months) at its dedicated web portal (https://www.gld.gov.hk/eng/services_2_b.htm) to provide a convenient access by prospective tenderers, including start-ups and SMEs to procurement information to facilitate their planning.

1.6 Demand management is a critical process in procurement planning. It is about changing users' expectation in the short run, changing suppliers' participation in the medium run and reducing B/D's need in the long run.

1.7 B/Ds should consult stakeholders and look into the following demand levers in shaping their requirements:

- (a) eliminate / consolidate demand;
- (b) review quantity required;
- (c) reduce demand frequency;
- (d) simplify / standardise specifications;
- (e) consider alternative ways of meeting needs;
- (f) encourage reuse; and
- (g) reduce portfolio range and complexity.

2. Market Research

A supply market analysis enables a detailed understanding of key technological trends, potential as well as major players in the market and the overall market dynamics that could influence the development of the procurement strategy, e.g. bundling (consolidating requirements to form a single contract) vs lotting (subdividing contracts into lots) strategy.

Market Research (MR) / Market Engagement (ME) / Expression of Interest (EOI)

2.1 To obtain information about the market, the following channels may be considered:

- (a) own knowledge;
- (b) previous experience;
- (c) meeting with suppliers, attending trade shows and pre-tender briefing (ME);
- (d) internet research;
- (e) professional / industry bodies;
- (f) enquiring with other buyers; and
- (g) enquiring with suppliers (EOI)

2.2 B/Ds should consider conducting MR / ME / EOI for the following items:

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- (a) items which are high-value or mission-critical;
 - (b) items with innovation opportunities;
 - (c) items with limited sources of supply;
 - (d) items with low response rate in open tenders; and
 - (e) items with changes in user requirements / technology.

SPR 350(e)

2.3 Conduct MR / ME / EOI as follows:

- (a) define target participants;
- (b) prepare MR / ME / EOI document or information to be shared and collected;
- (c) design engagement plan/ publish invitation notice;
- (d) conduct MR / ME / EOI; and
- (e) analyse data collected.

[N.B. Points to note when conducting MR / ME / EOI are set out at *Appendix 2*.]

2.4 Conduct MR / ME / EOI on a non-committal basis on the Government's side.

2.5 Apart from issuing an open tender in subsequent tender exercise, invite those suppliers / service providers which have responded to MR / ME / EOI to bid.

2.6 Make reference to the "Checklist on Dos and Don'ts in Market Engagement".

Appendix C to Annex D to FC No. 2/2019 or its subsequent updates

Supply Positioning

- 2.7 Application of the supply positioning tool enables B/Ds to determine the appropriate market techniques and strategies for procurement of different groups of commodities to maximise benefits to the buyer.
- 2.8 The process involves positioning procurement categories in terms of the relative size of the spending and availability of supply / substitutes to identify the potential risk and opportunity to B/Ds.
- 2.9 It helps identify tactical profit categories of purchase from which B/D could identify room for VFM purchase and strategic security or critical categories of purchase in which care and attention should be taken to ensure stability of supply.
- 2.10 Details on the application of the supply positioning tool in developing procurement strategies are provided at [Appendix 3](#).

3. Project Initiation

Having identified the procurement need with a better understanding of the goods or services available in the market, B/Ds may initiate a procurement project with the following activities.

Feasibility Study

3.1 Conduct feasibility study for the purposes of:

- (a) confirming technical feasibility of the proposed project;
- (b) selecting the most suitable technical option or service delivery mode in meeting B/Ds' business requirements;
- (c) estimating in more details the total resources requirement (including expenditure, staffing implications, etc.); and
- (d) establishing realistic implementation schedule.

3.2 If the feasibility study is undertaken by a consulting firm, take actions in accordance with *SPR 194 and 195* so as to maintain a level-playing field in the subsequent procurement exercise.

SPR 194 & 195

Estimated Contract Value

3.3 Make a pre-tender estimate based on available information e.g. current contract rates, labour and material price indices, and/or feedback from market research, etc.

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- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| 3.4 Consider trade-in option as far as practicable to reduce the handling costs. Count only the value of the new stores instead of the net value after deducting the value of the trade-in items. | <i>SPR 206</i> |
| 3.5 Do not disclose the estimated contract value to tenderers as it may become a main guiding factor in the preparation of their tender proposals. | <i>SPR 347(a)</i> |
| 3.6 If the estimated contract value has been disclosed to the public, inform all potential tenderers of the same. | |

Secure Funding

- 3.7 Unless prior approval has been obtained to conduct parallel tendering as described in paragraphs [3.8] to [3.12] below, do not invite tender before funding is secured.

Parallel Tendering

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| 3.8 (a) For works contracts funded under the Capital Works Reserve Fund, COs shall adopt parallel tendering. When parallel tendering is not adopted for works contracts funded under the Capital Works Reserve Fund, departments must quote the approving authority and provide a summary of reasons in the tender report. | <i>SPR 337 & Appendix III(I) to SPR</i> |
| (b) For other contracts, in case of need and upon the conduct of a risk assessment where the benefits outweigh the risks involved, parallel tendering (invite tenders before funding is secured) may be adopted with the approval granted by the relevant authority. | |
| 3.9 B/Ds must state clearly in the tender document that funding approval has not been obtained and that the Government will not be responsible for the cost of preparing tender. | |

3.10 B/Ds should not award a contract and should not indicate to the successful tenderer that the Government would accept its tender unless and until funding for that contract is secured.

SPR 338

3.11 Follow the conditions for contract award as set out in FC No. 3/2020 (as may be updated from time to time).

3.12 In case the funding required has not been approved before the expiry date of the tender validity period or extended tender validity period, cancel the tender exercise. Prior approval of such cancellation is not required.

SPR 380(d)

4. Drawing up Specifications and Requirements

*SPR 350 &
Appendix III(F) to
SPR*

In drawing up tender specifications for goods or services to be procured, B/Ds should ensure that the characteristics laid down for the goods or services are based on functional and performance requirements, with a distinction drawn between essential and desirable features. Where standards are referred to, these should, where practicable, be international standards. Tender specifications should not be drawn up to suit a particular brand or place of origin.

4.1 Essential vs Non-essential Requirements

(a) B/Ds need to distinguish between an essential requirement and a non-essential requirement when drawing up tender requirements.

(b) Non-compliance with an essential requirement will render a tender invalid.

(c) B/Ds should as a general rule not set tenderer's experience as an essential

SPR 350(a)

requirement in non-works tenders. If it is absolutely necessary, prior approval must be obtained from the relevant tender board / DTC for procurement adopting marking scheme under tendering procedures, or officers (normally at directorate level) designated by COs for procurement not adopting marking scheme under tendering procedures.

- (d) Information that may be submitted after tender closing without affecting the relative merits of the tenders (e.g. conviction record) should not be classified as “essential”.
- (e) To discourage late submission of missing documents (e.g. certificates, licences or proof of experience) which should be requirements but not essential requirements, include a provision that failure to comply with such a requirement may render the tender non-conforming. This allows B/D flexibility to require the tenderer to comply with the requirement before contract award.

4.2 Essential Requirements

- (a) Essential requirements are absolutely essential components without which a tender should be deemed non-conforming upfront.
- (b) Too general essential requirements may result in difficulty in tender evaluation.
- (c) Too stringent essential requirements may inhibit potential tenderers from participating in the tender exercise and thus limit competition.
- (d) The setting of essential requirements should not impose an unfair or over-demanding or undue technical burden on the tenderers.

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- (e) State clearly the consequence of not complying with any one essential requirement (i.e. the tender concerned not being considered any further) in tender document.
 - (f) Take into account the following when drawing up essential requirements:
 - ✧ Essential requirements should be simple and involve basically a yes/no assessment to screen out unqualified tenderers.
 - ✧ Essential requirements should be clearly and carefully worded to avoid ambiguity which may invite complaints against the Government or challenges against the tendering process / outcome. Apply the essential requirements to test scenarios to ensure clarity in application.
 - ✧ If there is more than one essential requirement, they should be either grouped together or referred to by paragraph numbers in one inclusionary paragraph, for easy reference by potential tenderers.
 - ✧ Observe the guidelines promulgated in FC No. 3/2019 (as may be updated from time to time) when setting essential requirements for assessment of tenders for service contracts that rely heavily on the deployment of non-skilled workers.

4.3 Desirable Requirements

- (a) Desirable requirements are nice-to-have features to be acquired without incurring additional cost.

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- (b) Non-compliance with desirable requirement will not constitute a reason for rejecting a tender offer.
 - (c) Indicate clearly those desirable requirements in tender document.

4.4 Optional Requirements

- (a) Optional requirements (e.g. spare parts, add-on items and consumables) are items which tenderers may offer.
- (b) Prices of optional items should not be taken into account in the price assessment.
- (c) Non-compliance with / no offer for optional requirement will not constitute a reason for rejecting a tender offer.
- (d) Provide full justifications in the tender report for acceptance of optional items (e.g. why these items are required and whether prices are fair and reasonable when compared with prices of same / similar items offered by other tenderers).

4.5 Technical / specialist specification should be vetted by the appropriate authorities.

SPR 210

4.6 Adopt the green specifications and green procurement practice promulgated by the Environment Bureau as far as possible.

*Environment
Bureau Circular
Memorandum No.
6/2015*

4.7 Exit Plan

- (a) An exit plan serves the following purposes:
 - ✧ To ensure the smooth transition of service delivery upon expiry of contract.

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- ✧ To minimise operational impact to B/Ds in the event of unsatisfactory relationship with the contractor leading to contract termination.
- (b) It provides the framework, requirements and timing for the activities to be undertaken as a result of early termination or expiry of a contract, in particular an IT contract.
- (c) Consider the following in drawing up an exit plan:
- ✧ Continuing service requirements during the transitional period which may include:
 - Requirements for the provision of parallel services for a certain period.
 - An obligation by the contractor to keep the same project team with relevant knowledge and expertise performing services during the transition.
 - Confidentiality in communication regarding the termination of relationship.
 - ✧ Data security and privacy.
 - ✧ Asset, knowledge and documentation transfer.

5 Tender Strategies

5.1 Develop Tender Strategies

In developing the tender strategy for procuring

the category of goods or services in question, B/Ds should make use of information and analytical data gathered during the demand management and market research stages.

- (a) Define a procurement strategy with clear options, deliverables, objectives, output or outcome at the start.
- (b) VFM does not simply mean buying at the lowest price. It should be assessed in terms of economy, effectiveness and efficiency, taking into account the total costs involved (measured on a whole-life costing basis) and the overall value to be created or brought about through the procurement.
- (c) Stimulate and encourage competition in the supply market, especially when there is a strong incumbent supplier.
- (d) Apply the supply positioning tool based on expenditure data and market information to work out the appropriate purchasing actions.

SPR 107

[N.B. Please refer to *Appendix 3* for deliberation on the application of the supply positioning tool in developing procurement strategies.]

- (e) Consider demand management by reducing consumption, consolidating spending and improving specification, etc.
- (f) Consider if the requirements can be grouped in a specific way to reflect market structure, e.g. procuring computer hardware desktop / laptop separately from software, breaking down a cleansing contract into geographical areas rather than a single departmental contract to encourage market participation.
- (g) Develop outcome-based specifications,

wherever possible, to encourage innovation.

- (h) Ensure that the results of all research conducted are collated and reviewed as a whole.
- (i) In case of contract renewal, make reference to the outcome of the past tender exercise and the lessons learnt in the previous contract in considering whether the tender specifications, evaluation criteria or terms and conditions of contract should be refined to encourage competition.
- (j) Bundling vs lotting strategy. While larger contracts created through bundling of different regions or venues may achieve better economy of scale, considerations should also be given to splitting them into smaller lots in the same tender exercise to enable more new comers to enter the market. Factors that discourage the application of lotting strategy include:
 - the execution of the contract would become excessively difficult or expensive, or
 - the need to coordinate different contractors for the lots would seriously undermine the proper execution of the contract.
- (k) The lotting strategy should not be used to evade the financial limit stipulated in SPR.

5.2 Formulate Action Plan

(a) Determine nature of tender

(i) Goods / Service / Revenue tender

SPR 200

Make reference to *SPR 200* to determine the procurement is a goods, service or revenue tender.

(ii) Tendering mode

✧ Adopt open tendering as a norm.

SPR 315

✧ Adopt single or restricted tendering only in circumstances specified in *SPR 325*.

SPR 325(a)

✧ Where single or restricted tendering is to be adopted, seek endorsement / approval as follows:

SPR 325(b)

- endorsement from a public officer at directorate level in B/D; and
- approval from CO personally for stores, services (excluding works contracts and consultancy) and revenue tenders invited by B/D within departmental limit specified in *SPR 220(a)*; or
- approval from DGL or his delegated officers for GLD tenders; or
- approval from PS(Tsy) for all other types of tenders except GLD tenders.

(iii) Determine whether the tender is covered by WTO GPA

✧ Three steps are involved in:

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- checking whether the procuring entity is covered by WTO GPA;
 - checking whether the subject matter to be procured is covered by WTO GPA; and
 - checking whether the value of the procurement meets the relevant thresholds of the WTO GPA.

- ✧ If all the three conditions above are satisfied, the procurement is covered by the WTO GPA.
- ✧ In case of a procurement for a mixed contract of goods / services / construction services, refer to Q12 of “Qs and As on Revised WTO GPA”.

(b) Draw up Lists of Suppliers / Service Providers to be Invited

- (i) Identify potential suppliers / service providers through the following sources:
 - ✧ supplier lists maintained by B/Ds;
 - ✧ supplier lists maintained by GLD;
 - ✧ contractor and unsuccessful tenderers in the last tender exercise; and
 - ✧ respondents in MR / ME / EOI exercise.

(ii) Debar suppliers from tendering

SPR 192(c)

Debar a consulting firm and its associates from participating in any subsequent procurement exercise arising out of or which was the very subject of the consultancy, unless exemption has been provided in the consultancy agreement.

(iii) Debar contractors with default records

- ✧ Seek Department of Justice (DoJ)'s advice on such debarment beforehand.
- ✧ State clearly the debarment in tender document.
- ✧ Handle tenders received from debarred suppliers / service providers with particular care and, where appropriate, seek DoJ's advice on whether such tenders could be considered.

(iv) Set restriction on maximum number of contracts awarded to a supplier / service provider.

- ✧ Under normal circumstances, contracts are awarded to tenderers who have been determined to be fully capable of undertaking the contracts and whose tenders, in terms of specific evaluation criteria, are determined to be the most advantageous.
- ✧ Impose this restriction under the following exceptional circumstances:

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- when the tender offers are assessed based on the tenderer's capability (i.e. financial, commercial and technical) to fulfil the contracts in question and the department concerned is able to substantiate that a tenderer, when taking up one contract for one region / group / item of goods / service, is incapable of undertaking the other contracts; or
 - due to the need to safeguard public interest or to protect public safety or health
- ✧ Ensure that the restriction is legally in order and WTO GPA compliant
Legal advice should be sought.

(c) Decide on Evaluation Criteria

(i) Basis of acceptance

- ✧ Determine the basis of acceptance as follows:
 - itemised;
 - group (e.g. by delivery locations / venues, nature of goods); or
 - overall (i.e. contract for all items in the same tender exercise to be awarded to one tenderer).
- ✧ Factors in considering the basis of acceptance:
 - compatibility of items with other items;
 - number and value of items involved;
 - attractiveness of items to tenderers; and
 - number of potential tenderers for each item.

(ii) Adoption of marking scheme

- ✧ B/Ds are encouraged to adopt marking schemes in tender evaluation to assess innovative suggestions. COs should designate officers (normally at directorate level) to approve cases not using a marking scheme for tender evaluation.
- ✧ Marking schemes should be clear and objective so as to provide a level playing field for bidders and encourage innovative suggestions.

*SPR 350(h) and (i)
& Appendix III(G)
to SPR*

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- ✧ Marking scheme should be formulated according to the SMS Framework promulgated in FC No. 2/2019 or its subsequent updates.
 - ✧ Any deviation from the SMS Framework will be subject to prior approval from the relevant tender board or DTC.
 - ✧ Follow the Guidelines for Adopting a Marking Scheme at *Appendix III(G) to SPR*.
 - ✧ Make reference to the checklist of key requirements set out at *Appendix 4*.

FC No. 2/2019 or its subsequent updates

(iii) Sample testing

- ✧ State clearly the following in the tender document:
 - quantity and type of tender samples required;
 - due date and location for submission of tender samples by tenderers;
 - assessment criteria for evaluating samples; and
 - return of samples.
- ✧ Take into account the time required for sample testing when setting the tender validity period.
- ✧ Follow strictly the sample assessment criteria and the documentation / certification requirements stipulated in the tender document to evaluate the samples received.

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- ✧ Consider the need to engage independent third parties to conduct the tests on samples (e.g. laboratories with HOKLAS accreditation).

(iv) Presentation / demonstration by tenderers

- ✧ May invite tenderers to make a verbal presentation / demonstration after tender closing date to introduce, explain and clarify their tender proposals (particularly innovative suggestions). Normally, the presentation / demonstration will not be taken into account in marking.
- ✧ State clearly the following in tender document:
 - time allowed for tenderers to prepare for presentation / demonstration;
 - venue for conducting presentation / demonstration;
 - equipment and documents to be prepared by tenderers for conducting presentation / demonstration;
 - the party responsible for the cost of presentation / demonstration;
 - requirements that presentation / demonstration will only be restricted to proposals submitted in the tender proposal and all additional / new offers will be disregarded; and
 - detailed procedures and rules for ensuring that the presentation / demonstration will be conducted and assessed in an objective and fair manner based on an established set of objective criteria.

*Appendix III(G)1 to
SPR*

(v) Factory inspection

- ✧ Do not conduct factory inspection unless the result of which is essential for tender

evaluation.

✧ State clearly the following in tender document:

- time allowed for tenderers to prepare for factory inspection;
- items to be inspected during factory inspection; and
- criteria for assessing the result of factory inspection.

✧ Bear the cost incurred from factory inspection (e.g. cost of travelling and accommodation for overseas factory inspection).

(vi) Assessment of tenderer (or its staff) or manufacturer's qualification / experience / past performance

Observe the guidelines set out in FSTB's memo "Cut-off Dates for Tender Assessment" dated 8.8.2014 for assessment of the above aspects (accessible via the link at [http://fb.host.ccg.hksarg/spr/memos/Memo_on_cutoff\(08082014\).pdf](http://fb.host.ccg.hksarg/spr/memos/Memo_on_cutoff(08082014).pdf)).

(vii) Price assessment methodology

- ✧ State clearly the price assessment methodology in tender document.
- ✧ To conduct a fair price comparison, take into account the following (if applicable):

Whole life cost

Take into account the recurrent cost (e.g. operating and maintenance costs, essential spare parts/consumable costs and disposal cost) throughout the

estimated life span of the equipment / system under acquisition.

Net-present value methodology

When the assessment of tender prices involves future money (say, maintenance charges for a certain period of time), a percentage for discounted cash flow as specified by FSTB should be taken into account in assessment of tender prices.

Trade-in price

- Take into account the trade-in price in tender price assessment.
- State clearly in tender document that the successful tenderer should still be responsible for removing and collecting the trade-in machine/system even if a zero trade-in price is quoted.

- ✧ When tender prices are quoted in foreign currencies, convert the tender prices to Hong Kong dollars based on the rate quoted by the Hong Kong Association of Banks on the tender closing date.

SPR 355(c)

- ✧ Under normal circumstances, prompt payment discount will not be taken into account in the price assessment.

(d) Prepare Tender Document

- (i) Normally use the following standard documentation:

SPR 345(a)

- ✧ Standard tender terms and conditions

For tenders arranged by GLD

- Tender for Supply of Goods (GLD-TERMS-1)
- Tender for Provision of Services (GLD-TERMS-2)

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- Tender for Purchase of Articles or Materials from the Government of HKSAR (GLD-TERMS-3)

For tenders arranged by B/Ds

- Tender for Supply of Goods (BD-TERMS-1)
- Tender for Provision of Services (BD-TERMS-2)

For IT tenders

- the set of standard terms and conditions for the design, supply, implementation and maintenance of IT systems (commonly known as turnkey solutions) issued by OGCIO

✧ Standard contract form

- Tender for the Supply of Goods (GF 230)
- Tender for Services (GF 231)
- Tender for the Purchase of Articles or Materials from the Government of HKSAR (GF 232)

- (ii) Clear non-standard documentation with DoJ before use.

SPR 345(b)

- (iii) Parts of a tender document

SPR 345(c)

✧ A complete set of tender covers the following:

- Tender Form (including Offer to be Bound)
- Interpretation
- Terms (Conditions) of Tender
- Marking Scheme (if any)
- Conditions of Contract (General and Special)

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- Tender Specifications
 - Price Schedules with quantities required
 - Other schedules such as “Compliance Schedule”

✧ Make reference to some common tender provisions at *Appendix 5*.

✧ Send all non-standard components of tender documents to DoJ for vetting before issue if a contract has an estimated value exceeding \$300 million. For a contract with an estimated value not exceeding \$300 million, departments may consider whether legal vetting is required provided that (a) the amendments to standard provisions by way of Special Conditions of Contract (SCC) has previously been cleared with DoJ; (b) largely the same SCC are applied to a subsequent contract with only insignificant and immaterial changes; and (c) the subsequent contract has an estimated value not exceeding \$300 million.

SPR 345(d)

(e) Form Tender Assessment Panel (TAP)

(i) Take into account the following when forming a TAP for evaluation of tenders :

SPR 370(a) and Appendix III(G)1 to SPR

- ✧ a TAP shall consist of not less than two government officials but the number of members involved should not be excessive;
- ✧ only properly qualified persons can assess technical submissions;
- ✧ set out specific terms of reference and specify the role of members (e.g. whether the TAP Chairman is a marking or non-marking member); and

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- ✧ may engage technical experts from outside the Government to join the TAP meeting to serve as technical advisors to provide useful advice on areas where their expertise is required if the required expertise is not available within the Government. In any case, technical advisors should not give marks on any assessment criteria or have access to price proposals submitted by tenderers.
- (ii) In case a TAP member is on long vacation / sick leave, consider changing the composition of the TAP with a view to speeding up the tender processing time.
 - (iii) Chairman and members of the TAP and technical advisors (if any) should avoid conflict of interest. Declarations / undertakings of TAP members and technical advisor (if any) should be drawn to the attention of TAP Chairman while the declaration of TAP Chairman should be drawn to the attention of his supervisor.
 - (iv) The membership of TAP, the declarations / undertakings made by the TAP and technical advisors (if any), and the specific terms of reference (members and chairman of the TAP and technical advisors) should be covered in the submission to the relevant tender board when seeking approval for the marking scheme and/or contract award.
 - (v) Observe the guidelines on the establishment of the TAP set out in *Appendix III(G)1 to SPR*.
- (f) Draw up timeline
- (i) Set tendering period *SPR 340(f)*
- ✧ Provide adequate time for tenderers to prepare and submit tenders.
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- ✧ For normal requirements
A minimum of three (3) weeks from the tender issuing date for tenderers to submit tenders.
 - ✧ For procurements covered by WTO GPA
 - at least 40 days for receipt of tenders;
or
 - no less than 25 days for applications to be prequalified to tender.
 - ✧ May set a longer tender period for tenders with complicated requirements, involving tender briefing / site visit or submission of custom-made tender samples, or adopting marking schemes for tender evaluation.

(ii) Set tender validity period

- ✧ Ensure that all tenders received are evaluated and approval for acceptance is obtained as soon as possible so as to avoid any unnecessary requests for extension of the tender validity period and the risk of tenderers withdrawing their offers due to the tender validity period requested being unduly long.
- ✧ In setting the tender validity period, take into account the following:
 - tender evaluation lead time
In case of adopting marking scheme and/or involving presentation / demonstration to be conducted by tenderers, a longer tender evaluation lead time should be provided;
 - actual time taken in the last / similar tenders;

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- time required for consideration by the relevant tender board / DTC; and
 - tentative date for contract commencement to meet B/Ds' operational needs.

SPR 375(b)

(g) Publish tender notice

SPR 340

- ✧ For procurements covered by WTO GPA, publish tender notice in the Government Gazette.
- ✧ Tender notice may be published on the Internet (department's website), in addition to the Government Gazette.
- ✧ Gazette / tender notice must be published on or before the tender issue date.

PART III	TENDERING
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Tasks**Before tender closing date**

- Tender Briefing
- Tender Enquiries
- Tender Samples
- Tender Addendum / Supplementary Information
- Extension of Tender Closing Date

After tender closing date

- Tenders Collected from Tender Opening Committee
- Clarification with Tenderers
- Tender Evaluation
- Financial Vetting
- Tender Negotiations
- Tender Reports

Before Tender Closing Date**1. Tender Briefing**

- 1.1 Allow potential tenderers to better understand the content of tender document, in particular for tenders with new / complicated requirements, and aim at enhancing competition.

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- 1.2 State clearly the following in the tender document:
- (a) the date, time and venue for conducting the tender briefing session;
 - (b) whether suppliers / service providers need to register for the tender briefing session beforehand; and
 - (c) the alternative arrangement for tender briefing session in case of bad weather on the day when the tender briefing session is originally scheduled.
- 1.3 Under normal circumstances, do not release any information which is not contained in tender document during tender briefing session.
- 1.4 In case information not contained in the tender document has been disclosed during the tender briefing session, inform all suppliers / service providers which have been invited and/or have collected tender document of the same.
- 1.5 If any briefing notes or powerpoint slides have been distributed to suppliers / service providers which participated in the briefing session, the same shall be disseminated to all suppliers / service providers which have been invited and/or have collected tender document (or publish on department's website in case of open tender) as soon as possible and in any case before the closing date for receipt of tenders.
- 1.6 Maintain contact details of participants and keep record of the briefing.

SPR 347(c)

2. Tender Enquiries

- 2.1 State clearly the following in tender document:
- (a) that enquiries should be in writing;
 - (b) the contact point for enquiries; and
 - (c) cut-off date for receiving enquiries.
- 2.2 Responses to tenderers' enquiries should be made in writing and within ten (10) working days. Issue an interim reply if a substantive reply cannot be made within the said timeframe. *SPR 347(b)*
- 2.3 In case a reply to an enquiry contains new / supplementary information, make known the same information to all suppliers / service providers which have been invited and/or have collected tender document (or publish on department's website in case of open tender) as soon as possible and in any case before the closing date for receipt of tenders. *SPR 347(c)*
- 2.4 A tenderer can be advised of any previous record kept of his performance and make representations against any adverse comments likely to be reflected in the assessment made to the relevant tender board / DTC. *SPR 347(d)*

3. Tender Samples

- 3.1 Ensure that tender samples received are in accordance with the requirements laid down in the tender document.
- 3.2 Issue a duly signed receipt to the tenderer as a proof of delivery and retain a duplicate on file.
- 3.3 Keep safe custody of tender samples received.

4. Tender Addendum / Supplementary Information

Tender addendum

- 4.1 Prepare a letter covering all amendments to the tender document required with replacement pages attached.
- 4.2 Issue the above-mentioned letter to all suppliers / service providers which have been invited and/or have collected tender document.
- 4.3 In case substantial amendments to tender document are required, consider extending tender closing date so as to allow sufficient time for potential tenderers to prepare / revise their offers.
- 4.4 Generally an addendum should not be issued less than five working days before the tender closing date. If this is not possible, consideration should be given to extending the tender period to allow at least five working days before the tender closing.

[Please refer to Clause 11 of Art. X of WTO GPA that for changes in criteria related to the tender notice, a re-issue of tender notice is necessary. Similar to 5.3 below.]

Supplementary information

- 4.5 Prepare a letter covering all supplementary information, i.e. additional information which potential tenderers need to know for preparation of tender offer.
- 4.6 Issue the above-mentioned letter to all suppliers / service providers which have been invited and/or have collected tender document.

5. Extension of Tender Closing Date

- 5.1 A tender period should only be extended under special circumstances. A request from one or more tenderers for an extension of the period is not a special circumstance.
- 5.2 Take into account the following when determining whether an extension of tender closing date is required :
- (a) whether sufficient time has been given for tenderers to prepare tenders;
 - (b) whether substantial amendments to the tender document have been issued near the original tender closing date;
 - (c) whether the extension of time would give advantage to any particular potential tenderer; and
 - (d) whether the extension of time would adversely affect the daily operation of the department or project schedule.
- 5.3 Announce the extension of tender closing date as follows :
- (a) issue a tender notice advising the revised tender closing date; and
 - (b) send letters to notify all suppliers / service providers which have been invited and/or have collected tender document and advise them to submit a revised offer, in case they have already submitted a tender and wish to make an amendment, with a covering letter addressed to the Chairman of Tender Opening Committee before the tender closing time.

After Tender Closing Date

6. Tenders Collected from Tender Opening Committee

- 6.1 Verify the number of tenders received and tender reference as shown on each tender against those recorded in tender referral document. *SPR 365(a) & (b)*
- 6.2 Check whether tender deposits (if required in the tender document) have been submitted by tenderers and forward the tender deposits to B/Ds' Accounts Section for safe custody.
- 6.3 Forward tenders and tender samples (if any) to the TAP for evaluation.
- 6.4 For tenders adopting a two-envelope approach for submission of tenders and marking schemes for tender evaluation, ensure that no price information is contained in technical proposals before forwarding technical proposals to the TAP for evaluation.

7. Clarification with Tenderers

- 7.1 Keep post-tender closing contacts with tenderers to minimum. *SPR 365(c)*
- 7.2 Record clearly and in full all post-tender closing contacts with tenderers. *SPR 365(c)*
- 7.3 Ensure that all post-tender closing contacts with tenderers will not give a tenderer any advantage or perceived advantage over other tenderers and will not give rise to any discriminatory practice. *SPR 365(c)&(d)*
- 7.4 Take into account the following when determining whether to seek clarification on

any information given by tenderers:

- (a) Is it an unintentional error of form?
- (b) Will it give the tenderer an opportunity to revise its offer, in particular the quoted price?
- (c) Will the ranking of price of tender change after clarification?
- (d) Will the tenderer withdraw its offer due to the price discrepancy?
- (e) Will the clarification result in any improvement / change in the tenderer's offer?

7.5 In case a tender submitted by a previous / existing contractor has left out factual / non-essential information which is required in the tender document, seek clarification with the tenderer instead of using the available contract information on-hand so as to ensure that no advantage is given to the previous / existing contractor.

7.6 Do not seek clarification under any of the following circumstances:

- (a) if a tender offer is found non-conforming at the outset;
- (b) if the provision of missing information is specified as an “essential requirement” in tender document;
- (c) if an offer to be bound is found missing or not signed; or
- (d) request a tenderer to withdraw all its counter-proposals since this act is classified as tender negotiation.

SPR365(e)

7.7 If in doubt on the basis for seeking clarification from a particular tenderer, seek the advice of DoJ.

SPR 365(h)

8. Tender Evaluation

- 8.1 Adhere strictly to the procedures and criteria laid down in tender document to evaluate tenders. *SPR 370(b)*
- 8.2 Ensure timely completion of tender evaluation so as to ensure sufficient time for subsequent tasks e.g. financial vetting, tender negotiation, seeking approval for contract award / cancellation of tender.
- 8.3 Ensure safe custody of all tenders and samples.
- 8.4 TAP's deliberations and decision should be properly documented.

For Tenders Adopting Marking Schemes for Evaluation of Tenders *SPR 370(c)*

- 8.5 TAP should agree on the mechanism for consolidating the marks given by individual TAP members to derive the overall technical score for a tenderer.
- 8.6 Assess tenders according to the criteria set out in the tender documents.
- 8.7 Score the tenders individually so as to avoid undue influence.
- 8.8 In case B/D considers that a collective assessment by the full TAP is necessary, prior exceptional approval from the relevant tender board or DTC has to be sought before evaluation of technical proposals. *Paragraph 9 in Appendix III(G)1 to SPR*
- 8.9 Open and assess price proposals after completion of technical assessment.

[N.B. In case B/Ds consider it necessary to open price envelopes prior to completion of technical *Paragraph 12 in Appendix III(G) to*

assessment, seek prior approval from the relevant tender board or DTC.]

SPR

- 8.10 If there is a division of opinion on a contract award between TAP members, the differing views should be submitted along with TAP's recommendation(s) for review by the relevant tender board or DTC.

For Tenders not Adopting Marking Schemes for Evaluation of Tenders

- 8.11 Evaluate the lowest priced offer in the first instance. If the lowest priced offer is found fully compliant with all essential requirements, recommend it for acceptance.
- 8.12 Otherwise, proceed with the evaluation of 2nd lowest priced offer until a conforming offer was identified.

9. Financial Vetting

- 9.1 Conduct financial vetting in respect of the recommended tenderer by a public officer of the Treasury Accountant grade.
- 9.2 In case the recommended tenderer has failed the financial vetting, it will be required to pay a contract deposit / submit a performance bond at 5% (for low risk contracts) or 6% (for high risk contracts) of the contract value.

*Paragraph 1 in
Appendix III(H) to
SPR*

*Paragraph 7 in
Appendix III(H) to
SPR*

10. Tender Negotiations

Need to Conduct Negotiations

- 10.1 Tender negotiation is not a must in each and every tender exercise.

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- 10.2 Make reference to the normal circumstances for conducting tender negotiations set out in *SPR 385(d)*.

Choice of Tenderer for Negotiation

- 10.3 Under normal circumstances, conduct negotiation with: *SPR 385(e)*
- (a) the single conforming tenderer; or
 - (b) the conforming tenderer whose tender has been found to be clearly the most advantageous to the Government in terms of the evaluation criteria set out in tender document (e.g. tender with the highest combined score).
- 10.4 In case there are more than one conforming offer with the same lowest tender price: *SPR 385(d)(v)*
- (a) conduct negotiation with all tenderers submitting lowest conforming offers in accordance with *SPR 385*; and
 - (b) allow all lowest conforming tenderers to submit revised price proposals to the specified tender box on the same specified date and time. *SPR 385(e) & (f)*

Approval for Conducting Tender Negotiation

- 10.5 Seek approval from COs or their designated directorate officers not having been involved in the concerned tender exercises, or the relevant tender board, as appropriate, for negotiations. *SPR 385(d)*

Who Will Conduct Tender Negotiation

- 10.6 Except tenders arranged by GLD, the public officers to conduct negotiations shall be at directorate level. *SPR 385(h)*

How to Conduct Tender Negotiation

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|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| 10.7 | Before participating in tender negotiation, make declaration of interest in accordance with <i>SPR 186</i> . Only public officers with no real or potential conflict of interest shall lead or participate in negotiations. | <i>SPR 186 and 385(m)</i> |
| 10.8 | Conduct negotiations by exchange of correspondence and/or meetings. | <i>SPR 385(l)</i> |
| 10.9 | Observe the guidelines for tender and contract negotiations set out in <i>Appendix III(J) to SPR</i> . | <i>Appendix III(J) to SPR</i> |
| 10.10 | Seek advice or assistance from GLD on commercial aspects and DoJ on legal aspects, where necessary. | <i>SPR 385(i)</i> |

Negotiation on Tender Prices

- 10.11 Consider the following when determining the need for conducting negotiation on tender prices:
- (a) What are the grounds for negotiation?
 - (b) Is the tender price on the high side (for goods / service tenders) or low side (for revenue tenders) when compared with the pre-tender estimate?
 - (c) Is the pre-tender estimate realistic?
 - (d) Whether the potential price savings come from the high cost of mandatory items (required by the Government as stipulated in the tender document) or excessive items (proposed by the tenderer in addition to the mandatory items)?
 - (e) Will price savings adversely affect the service level of the contractor?
 - (f) Whether the administration cost for conducting negotiation outweighs the savings to be achieved?

11. Tender Reports

Prepare Tender Reports

- 11.1 Adopt the standard format at *Appendix III(I) to SPR*. *SPR 375(a) and Appendix III(I) to SPR*
- 11.2 Tender boards or DTC will consider / approve tender recommendation based on the information provided in the tender reports having regard to tendering principles and established tendering procedures. Therefore, the tender reports should be self-contained.
- 11.3 It is B/D's responsibility to ensure the accuracy of tender evaluation result and the correctness of information given in the tender reports.
- 11.4 Provide the following information in the tender report in respect of reasons for not considering any tenders:
- (a) details of non-compliance with the essential requirements and/or the technical specifications found in the sample evaluation / testing result, if applicable;
 - (b) details of non-compliance of offer submitted by the existing contractor, e.g. changes in existing contract requirements and reasons for such changes; and
 - (c) if the reason of rejection is related to tenderer's failure to provide information as required, state (i) whether the tenderer has submitted such information with its offer; (ii) date of requesting the tenderer to provide such information and due date for reply (if submission after the tender

closing time is allowed in the tender document); and (iii) date of receipt of tenderers' reply, if any.

11.5 Ensure that tender reports are signed by officers as stated in *SPR 375(a)*. *SPR 375(a)*

11.6 Approval for cancellation of a tender exercise is not required under the following circumstances: *SPR 380(d)*

(a) when no tenders are received after the close of tender invitation, or

(b) in the case of parallel tendering, if funding could not be secured before expiry of the tender validity period.

Submit Tender Reports

11.7 Ensure that sufficient copies of tender reports are submitted as required under *SPR 375(b)*. *SPR 310(c) and 375(b)*

11.8 Submit tender reports to the relevant approving authority in a timely manner, i.e. at least four weeks before the expiry of the tender validity of the recommended tender or the contract commencement date. *SPR 375(b)*

PART IV | CONTRACT AWARD

Tasks

- Contract Formation
- Contract Deposit
- Announcement of Contract Award
- Return of Tender Deposit and/or Samples to Unsuccessful Tenderers
- Disposal of Tender Documents
- Advice / Suggestions from Tender Boards and Departmental Tender Committee

1. Contract Formation

1.1 Issue letter of acceptance, irrespective of whether it is a conditional acceptance of tender notification or letter of acceptance, after obtaining approval from the relevant approving authority and within the tender validity period. Otherwise, no contract is formed. *SPR390(b)*

1.2 The above-mentioned letter of acceptance or document shall be signed by a public officer at directorate level, save for procurement under the quotation procedures which shall be signed by a designated officer not lower than the rank of Assistant Supplies Officer / Executive Officer II or equivalent. *SPR 505(e) & (f)*

Sample Letter of Conditional Acceptance *[Sample letter at Appendix 6]*

In issuing a letter of conditional acceptance, the following points should be noted:

1.3 Ensure the correctness and consistency of details

of the letter with those approved by the approving authority.

- 1.4 Request the selected tenderer to fulfil conditions laid down in tender document within a certain period of time.
- 1.5 Monitor closely the fulfilment of the conditions by the selected tenderer.
- 1.6 Issue a letter of acceptance to the selected tenderer if it has fulfilled all the conditions stated in the notification.
- 1.7 Subject to tender provisions and legal advice, take default actions against the selected tenderer if it fails to fulfil all or any of the conditions stated in the notification.
- 1.8 When B/D issues letter or document (e.g. letter of acceptance) to inform the selected tenderer of the evaluation result and specify certain conditions to be met (e.g. payment of contract deposit or checking of demerit points) before confirmation of Government's acceptance of the offer, such document will conclude the contract upon fulfilment of the conditions specified therein.

Letter of acceptance

[Sample letter at Appendix 7]

In issuing a letter of acceptance, the following points should be noted:

- 1.9 Ensure the correctness and consistency of details of the letter with those approved by the approving authority.
- 1.10 Subject to tender provisions, a contract will be formed upon the issuance of the letter of acceptance.

2. Contract Deposit

2.1 Where it is required by the terms of the contract, B/Ds shall ensure that the contractor has paid the deposit within the period specified in the tender document.

SPR 361

2.2 In case the contract deposit received is a banker's guarantee, check whether the wordings of it are the same as the form attached to the tender document.

In case of discrepancies which may jeopardise the Government's interest, ask the successful tenderer to revise the wordings and/or re-submit a new banker's guarantee.

2.3 B/Ds should not accept a banker's guarantee which contains an expiry date earlier than the date as specified in the tender document.

2.4 Failure to pay the contract deposit by the successful tenderer may result in immediate termination of contract by the Government, or no award of contract if submission of contract deposit is a condition precedent to acceptance of the offer.

3. Announcement of Contract Award

Contract Award Notice

3.1 Ensure the correctness and consistency of contract award details with those approved by the approving authority.

3.2 Indicate in the contract award notice the estimated contract value as approved by the approving authority, even if the Government has

no commitment on any value in the contract.

- 3.3 Publish a notice of contract award in procuring department's homepage on the Internet. *SPR 390(c)*
- 3.4 Provide details of the contract awarded in a particular month to GLD at least two (2) weeks before the end of the following month for publication on the Internet. *SPR 390(d)*
- 3.5 DTCs shall provide details to the relevant tender board if the accepted tender is not the lowest conforming offer or the tender of the highest combined scorer (in case a marking scheme is used for tender evaluation). *SPR 310(g)*
- 3.6 For tenders covered by WTO GPA,
- (a) publish the contract award notice not later than 72 days after the award of contract; and *WTO GPA Article XVI.2*
 - (b) provide a statement indicating the circumstances and conditions that justified the use of limited tendering in accordance with WTO GPA Article XIII.2 in the contract award notice for contracts awarded under single or restricted tendering. *SPR 390(c)*

Notification to Unsuccessful Tenderers *[Sample letter at Appendix 8]*

- 3.7 Send letters promptly to notify all unsuccessful tenderers of the following: *SPR 390(b)*
- (a) name of successful tenderer;
 - (b) contract value; and
 - (c) reasons why their tenders were unsuccessful (which should be the same as the ones stated in tender reports).

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- 3.8 After cancellation of a tender exercise, ensure that all tenderers have been informed of the tender result (and if applicable, including the reasons why their tenderers were rejected) before initiating a re-tender exercise.

Signing of Contract

- 3.9 Prepare a complete set of contract which normally comprises the following :

- (a) tender offer submitted by the successful tenderer with amendments resulting from tender negotiation;
- (b) if applicable, successful tenderer's correspondences received after tender closing date;
- (c) a copy of letter of acceptance; and
- (d) a copy of tender document including addenda (if any).

- 3.10 Check the company status of the successful tenderer and ensure that contract is signed by persons duly authorised by the successful tenderer.

SPR505(a) to (d)

- 3.11 Contract has to be signed by a public officer at directorate level unless the PS(Tsy) has authorised otherwise.

SPR505(e)

- 3.12 For procurement under quotation procedures, contract has to be signed by a public officer not lower than the rank of Assistant Supplies Officer/ Executive Officer II or equivalent designated by CO.

SPR505(f)

- 3.13 Distribute contract copies as follows :

SPR530(a)

- (a) original copy shall be retained by procuring department;
- (b) one copy to successful tenderer; and
- (c) one certified true copy to the Director of Audit.

4. Return of Tender Deposit and/or Samples to Unsuccessful Tenderers

[Sample letters at Appendices 9 and 10]

- 4.1 After award of a contract, send letters to unsuccessful tenderers to return tender deposit and/or ask them to collect tender samples, if any.

5. Disposal of Tender Documents

For tenders not covered by WTO GPA

SPR 530(c)

- 5.1 May destroy tender documents submitted by unsuccessful tenderers three (3) months after the date the relevant contract has been executed.

For tenders covered by WTO GPA

SPR 530(d)

- 5.2 Retain all tender documents for a period of not less than three (3) years from the date of contract award.

6. Advice / Suggestions from Tender Boards and Departmental Tender Committee

- 6.1 Upon receipt of advice / suggestions from tender board / DTC's, take timely follow-up actions before arrangement of a new tender exercise for contract renewal.
- 6.2 State the follow-up actions that have been taken in the tender report in the next tender exercise in case of contract renewal.
- 6.3 Make reference to key observations from tender boards available on Central Cyber Government Office (CCGO) and ensure that such comments from tender boards have been taken into account where appropriate.

PART V	CONTRACT IMPLEMENTATION
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Issues

- | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none">➤ Best Practices➤ Policy of Insurance➤ Assignment and Sub-contracting➤ Publicity |
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1. Best Practices

Building Relationship

- 1.1 B/Ds and contractors should seek to build a relationship with trust and commitment through open and frequent dialogue.
- 1.2 Trust relationship and collaborative culture can be established by the following measures:

- (a) Early Notification

- ✧ Issue letter of acceptance to the successful tenderer once approval from the relevant authority has been obtained.
 - ✧ Allow sufficient time for transferring the services from the original contractor to a new contractor.
 - ✧ For service contracts that rely heavily on the deployment of non-skilled workers, advance notice to facilitate the contractor's exit arrangement and manage the workers' sentiments.

(b) Kick-off Meeting

- ✧ Conduct kick-off meeting for service contracts with a view to:
 - getting contractors familiar upfront with the way B/Ds operate;
 - facilitating the engagement process from the start of the transition planning stage; and
 - exploring opportunities to streamline work processes.
- ✧ Involve all stakeholders to cover the following details:
 - implementation plan;
 - returns / complaints / escalation process; and
 - contract / supplier management and monitoring processes to reduce risk and improve contractor's performance.
- ✧ Kick-off meeting should be conducted as soon as possible, or at least two (2) weeks before commencement of contract, to allow parties concerned to make adjustments for service delivery if necessary.

(c) Ongoing Review

Conduct regular service delivery and contract meetings for ongoing review, providing feedback for continuous improvement, promoting open and clear communication, enhancing mutual understanding and resolving issues together.

(d) Senior Management Participation

Involve senior management from both parties periodically to maintain the relationship and ensure that it stays on track throughout the term of the contract.

Appointment of a Contract Manager / Contract Management Officer

1.3 Each contract should be managed by a nominated officer as the principal owner of the supplier relationship and performance management. His responsibilities include:

- ✧ monitoring contract and supplier performance against key performance indicators as specified in the contract;
- ✧ managing issues arising from the performance of the contract;
- ✧ chairing and managing performance review meetings with contractors;
- ✧ managing major performance issues and complaints; and
- ✧ providing guidance and advice to end users as necessary.

Compliance with Terms and Conditions

1.4 Ensure all the stakeholders are familiar and comply with the terms and conditions of the contract for effective contract execution and management.

1.5 Ensure the contractor has submitted all the required documentation, e.g. operation plans, within the specified period from the contract date.

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- 1.6 On no account should orders be placed in excess of the quantity and/or value stipulated in the contract.
 - 1.7 CO allowing or ordering the procurement of stores, services or revenue contract without appropriate authority may be held personally responsible for the amount so expended or revenue so lost.
 - 1.8 Any officer who authorises amendments to any terms and conditions of the contract without prior approval will be held personally accountable for all consequences, including but not limited to financial losses, which may arise as a result of his action.

SPR 205

2 Policy of Insurance

- 2.1 Where it is required by the terms of the contract, B/Ds shall ensure that the contractor has submitted a valid policy of insurance together with premium receipt prior to executing the contract.
- 2.2 For accidents resulting in personal injury of the contractor's employees, the contractor is obliged to notify the Commissioner for Labour.
- 2.3 For accidents involving damages to property and/or injuries sustained by the public which may lead to public liability claims, B/Ds shall immediately notify the contractor.
- 2.4 The contractor is responsible for lodging all claims with the insurance company.

SPR 510(a)

*SPR 510(b),
Employees' Compensation
Ordinance (Cap. 282, S. 15)*

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- 2.5 Should any claim be made directly against the Government, B/Ds shall immediately notify the contractor, the DoJ and/or the Commissioner for Labour.

3. Assignment and Sub-contracting

- 3.1 Unless otherwise provided for in the contract, the contractor shall not assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the contract. The performance of the contract by the contractor shall be personal to it.
- 3.2 Sub-contracting of the contract shall not relieve the contractor of any of its obligations or duties under the contract, and the contractor shall remain fully liable to the Government and be responsible for the acts and omissions of its sub-contractors as though they were its own.

4. Publicity

- 4.1 Whether before, during or after the expiry or termination of the contract period, the contractor shall not use the Government's name in any document, publication, advertisement or publicity material without the prior written consent of the Government.
- 4.2 Notwithstanding any consent or approval given, the contractor shall remove all advertisement and publicity material relating to the contract upon request by the Government.

PART VI	CONTRACT MANAGEMENT
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Issues / Tasks

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| <ul style="list-style-type: none">➤ Contract and Supplier Management➤ Risk Management➤ Unsatisfactory Performance➤ Protection of Non-skilled Workers Engaged by Government Service Contractors➤ Alert System for Service Contractor's Performance➤ Contingency Plan for Service Disruption |
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1. Contract and Supplier Management

- 1.1 Contract information has to be disseminated to end users for execution and management of contract.
- 1.2 Ensure officers engaged in managing suppliers fully understand and follow the contract terms and conditions.
- 1.3 Closely monitor the draw-off rate to ensure the contract requirements are not exceeded.
- 1.4 Establish effective performance monitoring mechanisms according to the specific types of goods / services provided including:
 - (a) quality assurance measures (e.g. day-to-day monitoring, inspections, supervisory checks, laboratory testing, self-reporting and self-declaration of compliance by contractors);
 - (b) regular interviews with service contractor's employees in case of contract relying heavily on the deployment of non-skilled workers;

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- (c) end user monthly feedback and customer satisfaction surveys;
 - (d) management information / progress reports required to be provided by the contractor for accountability; and
 - (e) regular meeting with the contractor for early identification of problematic issues and implementation of the necessary improvement measures.
- 1.5 Draw up workflows for monitoring delivery progress, in particular, the escalation process in case of unsatisfactory performance.
- 1.6 Ensure the escalation process is clearly defined, understood and communicated to all stakeholders and end users.
- 1.7 Keep in safe custody contract deposit paid in cash or by submission of a performance bond as security for the due and faithful performance of the contract. The performance bond may be in the form of a guarantee from a bank, insurance company, or the contractor's parent company.
- 1.8 Contract deposit shall not be refunded until the contract has been completed according to the terms of the contract. Likewise, performance bond must be maintained in force until the contractor has performed all its obligations under the contract.
- 1.9 B/Ds should verify the contractor's qualification status during the contract period by requiring the contractor to submit updated certification, if it is an essential requirement for the contractor to be accredited to certain qualification, such as ISOs.

SPR 362(d)

2. RiskManagement

- 2.1 Mission-critical, emergency-related or health-related contracts and contract types with high concentration risks are considered to be high risk contracts.
- 2.2 Conduct periodic financial vetting for contracts of high risk and long duration, i.e. contracts of more than five (5) years, at three-year interval.
- 2.3 If the contractor fails in the periodic financial vetting, apart from any change in contract deposit as required in the terms of contract, check for the emergence of any obvious irregularities (e.g. drastic or continuous reduction in profitability, discontinuity of related business operations, increase in customer complaints) and step up monitoring measures with a view to detecting early signs of default.
- 2.4 Identify risk associated with delivery failure or service disruption.
- 2.5 Draw up a business continuity plan for goods or services considered as critical to B/D's operation and identify potential suppliers / service providers in the market who can be engaged as back-up during contingency situations.
- 2.6 Ensure that the contingency plan is updated for each high risk contract.

SPR 362(b)

3. Unsatisfactory Performance

Immediate Actions

- 3.1 Issue hastening letter when delivery of goods / service is overdue.

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- 3.2 Request the contractor to provide an action plan to ensure the delay in delivery could be remedied in a short time frame.
 - 3.3 Depending on the severity of the issue, it may be necessary to hold a face-to-face meeting with the contractor.
 - 3.4 All discussions / meetings should be documented to ensure that an audit trail exists.

Escalation Process

- 3.5 If resolution is not completed within the agreed time frame, the issue should be escalated to senior management.
- 3.6 Consideration should also be given to escalating the issue within the contractor's organisation and arranging an early face-to-face meeting where actions and timescale for rectifying the situation should be agreed and implemented.
- 3.7 Monitor remedial actions on a regular basis to ensure that the agreed timeframe is adhered to.

Consequences

- 3.8 In case of failure to comply with contractual obligations; or breach of commitment in respect of innovative suggestions accepted; or unsatisfactory performance without rectification within a specified timeframe, B/D should be entitled to record and issue written notice of default to the contractor and to make a deduction by way of liquidated damages from the contract sum that becomes due to the contractor in accordance with the conditions of the contract. Sample provisions of liquidated damages for individual contracts are available in CCGO for reference.

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- 3.9 If failure to make timely delivery persisted, warn the contractor in writing that further unsatisfactory performance may result in termination of the contract and/or suspension of the contractor from bidding for Government's new contracts. *SPR 538*
- 3.10 Suspend payment to the contractor in case the pre-agreed contractual milestones could not be achieved. *SPR 538*

4. Protection of Non-skilled Workers Engaged by Government Service Contractors *FC 3/2019*

Implementation of a Demerit Point System

- 4.1 For service contracts that rely heavily on the deployment of non-skilled workers engaged by government service contractors (GSCs), COs are required to implement a demerit point system (DPS) against those GSCs that have breached their contractual obligations in respect of:
- (a) wages;
 - (b) daily maximum working hours;
 - (c) signing of standard employment contracts with their non-skilled workers;
 - (d) wage payment by means of autopay to their non-skilled workers;
 - (e) pay statutory holiday pay to those non-skilled workers who have been employed under a continuous contract for not less than one month;
 - (f) pay wages at a rate of at least 150% for those non-skilled workers required to work when typhoon signal no. 8 or above is hoisted; and
 - (g) pay gratuity to those non-skilled workers with no less than one year of service under a continuous contract.
- 4.2 For breaches of contractual obligations in respect of wages, demerit points shall be issued

irrespective of the form of breaches (e.g. non-payment of wages, late payment of wages, or failure to pay wages at the committed wage level).

- 4.3 As long as the carrying out of a substantive part of the contract relies on the deployment of non-skilled workers, it should be subject to the requirement in 4.1 above even if the number of such workers is small in absolute terms.
- 4.4 Under the DPS, a default notice **MUST** be issued for each breach of the contractual obligations mentioned in 4.1 above. Each default notice attracts one demerit point. COs have no discretion not to issue a demerit point.
- 4.5 For service contracts awarded under the quotation procedures, implementation of DPS is also required, unless otherwise approved by COs (or the directorate officer(s) authorised by the CO).

Information Sharing

- 4.6 B/Ds must provide information on the demerit points they have given to their contractors and sub-contractors after the previous return to GLD, using the proforma at [Appendix 11](#), on or before the 5th and 20th day of each month. GLD will consolidate and publish the information on CCGO on the 10th and 25th day of each month.

Termination of Contract

- 4.7 CO shall terminate a contract if the contractor or its sub-contractor(s) has obtained any conviction under specified offences under the relevant Ordinances (i.e. Employment Ordinance, Employees' Compensation Ordinance, Immigration Ordinance, Criminal Procedure Ordinance, Occupational Safety and Health Ordinance, Factories and Industrial

Undertakings Ordinance and Mandatory Provident Fund Schemes Ordinance) or three (3) demerit points over a rolling period of three (3) years arising from the same contract.

- 4.8 CO may determine the period of notice of termination to be served to the contractor having regard to the provisions in the contract and the operational needs.
- 4.9 Withhold termination if the conviction or demerit point is under appeal or review and until the appeal or review has been dismissed by the court or by B/D's appeal panel.
- 4.10 Some general guidelines on the appeal mechanism under the DPS is at [Appendix 12](#).

5. Alert System for Service Contractor's Performance

Watch out for the following alert parameters in monitoring service contracts, in particularly for those contracts which rely heavily on the deployment of non-skilled workers. B/Ds may add other parameters unique to their operational circumstances and contractual requirements to the list.

- 5.1 Number and nature of advisory / warning letters, default notice (non-employment related) issued
Drastic increase in the number of warnings issued due to repeated shortage of service equipment / consumables or deterioration of service standard could be an indicator of management crisis and financial hardship of the contractor.
- 5.2 Behavioural change of contractor's manager and supervisory staff
Poor / slow response to repeated warnings and persistent omissions in taking remedial measures

particularly in areas with financial implications such as shortage of manpower / equipment and vehicle provision / consumables etc. could be a sign of financial difficulty of the contractor.

5.3 Frequent change / turnover of staff

Replacement of staff in batches and large numbers within a short period of time could be a warning sign of financial hardship as workers will possibly resign if they have learned from insider sources of information that the company is in financial difficulty.

5.4 Urging for prompt payment

Contractor seeking earlier payment of monthly charge than normal schedule could be a sign of financial hardship.

5.5 Drastic increase of complaints

Drastic increase of complaints from various sources could also be a sign of management crisis as well as financial hardship.

6. Contingency Plan for Service Disruption

6.1 Decide what will be the most essential actions to ensure continuity of service to the public / user.

6.2 Consider what functions have to be changed or reduced due to limited resources.

6.3 Determine the specific trigger for activation of the contingency plan.

6.4 State clearly who will be in charge of what and when.

6.5 Create a timeline for how the scenarios might unfold.

6.6 Communicate the plan to all concerned parties.

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- 6.7 Review the plan on a regular basis, especially if there are changes to the operational environment and/or processes.

PART VII EXECUTION OF CONTRACT

Issues / Tasks

- Quality Assurance
- Avoid Exploitation of Labour
- Payment
- Contract Variations
- Contract Negotiations

1. Quality Assurance

1.1 Goods

Inspection of Goods

- (a) Stores delivered should be inspected or tested according to the terms and conditions of the contract.
- (b) The Departmental Stores Manager (DSM) is responsible for ensuring the stores supplied by a supplier are in full compliance with the contract or order specifications. The officer who receives the stores should report immediately to the DSM any incidents of sub-standard stores received.

SPR 815

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- (c) The officer authorised to sign an order voucher should ensure that the stores ordered are delivered to the correct location within the stipulated time. This officer should sign for any subsequent alteration or amendment to the order or cancellation of delivery and agree this in writing with the supplier. *SPR 820*
- (d) Upon receipt of stores, departments should *SPR 825*
- ✧ inspect the stores received within a reasonable period of time. If stores received are subject to extensive testing procedures, payment may only be made upon satisfactory completion of the acceptance testing; except where the contract specifies otherwise; and
 - ✧ account immediately for the accepted stores and give due consideration to any discount for prompt payment offered by the supplier. Payment should be made in accordance with the relevant provisions in the Financial and Accounting Regulations.
- (e) For stores supplied under GLD allocated term contracts under the purview of the Provisioning & Inspection Section, accepted samples are available for inspection.
- (f) For identification purposes, the packing of the stores should be labelled with the order/contract number and date-stamped with the received date by the receiving office.

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- (g) If B/Ds are in doubt of the quality of the stores, such stores may be subject to testing by the Government Laboratory or Government appointed independent testing agent to determine their compliance with the specifications and/or approved sample submitted by the supplier. Such charges are to be borne by the supplier if the stores failed to pass the required test.

Handling of Sub-standard Goods

- (h) Reject the goods and withhold payment.
- (i) Demand replacements.
- (j) The officer who receives the sub-standard goods or materials should report immediately to the DSM for follow-up actions.
- (k) B/Ds should reject stores from suppliers in writing, with a copy to DGL for an order placed under a contract let by GLD.

SPR 835

1.2 Services

Inspection Procedures / Guidelines

- (a) B/Ds shall draw up inspection procedures / guidelines to ensure that a contractor performs to standard and complies with the terms of a contract.
- (b) When the performance of a contractor is not satisfactory or deteriorating, B/Ds should:
- ✧ notify the contractor in writing;
 - ✧ invite the contractor to explain the reasons for the unsatisfactory performance;

SPR 537

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- ✧ request the contractor to make improvements; and
 - ✧ step up monitoring.

(c) The Government is entitled to reject unsatisfactory performance of the services and withhold payment of the contract price until the deficiencies or defects have been rectified by the contractor.

2. Avoid Exploitation of Labour

- 2.1 B/Ds should strengthen measures for closely monitoring the performance of their service contractors, especially on their compliance with employment related contractual requirements and the standard employment contract that they have signed with their non-skilled workers.
- 2.2 Frontline supervisors should be alert to suspected contractor malpractices, such as suspicious arrangements, activities that indicate uncommon trade practices, complaints about abuse and exploitation of labour.

Measures for Protection of Non-skilled Workers

- 2.3 Increase transparency of employment-related information to contractors' employees (e.g. posting notices of committed monthly wages and daily maximum working hours of non-skilled workers at roll call points).
- 2.4 Establish formal and secure channels (e.g. e-mail address, mailbox, enquiry hotlines) for contractor's employees or relevant personnel to report potential or suspected contractor malpractices.

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- 2.5 Conduct random interviews with contractor's employees to understand existing practices and detect any malpractices.
 - 2.6 Deploy an independent investigation team to investigate the reported problems.
 - 2.7 Report investigation results to senior management and/or relevant law enforcement authorities as appropriate.
 - 2.8 Take prompt regulatory action in case a contractor has breached any employee-related law or contractual obligations.
 - 2.9 Be aware of legal implications with the sharing of information on suspected illegal activities and malpractices. DoJ and/or Labour Department should be consulted as appropriate.

3. Payment

- 3.1 Contractors need to be paid on time. Delayed payments could hurt their cash flows, impair their ability to supply and even put them at risks.
- 3.2 Payment should normally be made within 30 calendar days upon acceptance of the deliverable.
- 3.3 Pay attention to any 'Prompt payment discount' term in the contract. Officers may be held personally responsible for the amount so expended if they missed the payment deadline.
- 3.4 Recovery of sums due. Whenever under the contract any sum of money shall be recoverable from or payable by the contractor, the same may be deducted from any payment due to the

SPR 515(a)

contractor under the contract of any other Government contracts.

- 3.5 Advance payment is normally not allowed unless it was stipulated in the contract or under normal business practice or appropriate authority for advance payment has been obtained. *SAI 1335(d)*
- 3.6 Regarding the appropriate authority for approving advance payments, B/Ds should make reference to *SPR 515(a)* and the general guidelines laid down in FC No. 7/2004 ‘Creation of Advance Accounts’.
- 3.7 If any advance payment guarantee is specified in the tender document, b/ds should ensure that the advance payment guarantee with wordings as those provided in the tender document has been received before any payment can be made. Furthermore, the advance payment guarantee can be released only upon fulfilment of the conditions stipulated therein.
- 3.8 Withhold payment if the contractor fails to observe or perform any obligations under the contract.

4. Contract Variations

General

- 4.1 A CO, or a designated officer of appropriate rank, may approve any number of variations to a contract which are inevitable and do not increase the original contract value, provided that all relevant factors, including rates, are no less favourable. *SPR 520(b)*

4.2 For a contract that involves variations leading to a decrease in contract value in one area and an increase in contract value in another, only the variation that leads to an increase in contract value will count under the accumulated value of the contract for determining the appropriate level of authority for seeking approval for contract variation.

SPR 520(d)

4.3 Any variation to a contract which will increase the original contract value, or any increase in contract sums must be approved by the appropriate authority. A schedule of authorities for variation of contracts is set out in *Appendix V(B) to SPR*.

Appendix V(B) to SPR

4.4 For contracts concluded by GLD on behalf of B/Ds, B/Ds should, unless otherwise agreed by GLD or provided in GLD Circular No. 2/2013 “Minor Contract Variations to Government Logistics Department Contracts” (or its latest update), submit all proposed contract variations to GLD for review and processing.

4.5 A checklist for preparation / processing of contract variations is provided at *Appendix 13*.

Change of Contract Value

4.6 The cumulative value of all changes should not normally exceed 50% of the original contract value. Such variations should be avoided as far as possible and should normally be used as a stop-gap measure, unless they are otherwise justified in accordance with the GLD Circular issued from time to time. Contract variation should be kept to the minimum and limited to those that are absolutely essential. For the avoidance of doubt, contingencies or optional items shall not be counted as part of the original contract value.

SPR 520(c)

Change of Contract Scope

- 4.7 Contract variations, especially those not provided for in the original contract, may amount to new procurements. *SPR 520(e)*
- 4.8 If the proposed contract variation would constitute a substantial change to the scope of the original contract, a new contract should be arranged.

Change of Contract Period

- 4.9 An extension of contract or maintenance period may be perceived as a means to favour the existing contractor and bypass the normal tendering procedures, which may lead to bid challenges or complaints from other potential suppliers / service providers.
- 4.10 If it has been specified in the contract that the Government may extend the contract period, B/Ds may, with prior approval from the appropriate authority as stated in *Appendix V(B) to SPR*, exercise the extension option having considered the following factors: *Appendix V(B) to SPR*
- (a) whether the performance of the contractor has been satisfactory; otherwise, the extension option should not be taken and seek legal advice in case of doubt;
 - (b) whether the market price is on an upward trend so that it would be more favourable to the Government to proceed with the proposed extension;
 - (c) whether there is any foreseeable change in operational requirements e.g. consumables will become obsolete and extension of contract period will put B/Ds in a risky position; and

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- (d) whether a new tender exercise to catch up with the latest technology is more appropriate.

4.11 When the contract or maintenance period is extended, the contractor should be requested to submit a fresh banker's guarantee or performance bond or to extend the validity period of the existing banker's guarantee or performance bond up to the end of the extended period.

5. Contract Negotiations

5.1 If it is considered to be in the best interest of the Government to negotiate variations to the prices or terms and conditions of an existing contract, B/Ds shall seek agreement from the relevant authority on the proposed variation and seek its prior agreement to the strategy or bottom line for the contract negotiation.

SPR 525

5.2 For GLD contracts, DGL is the authority to approve contract negotiation.

5.3 Conduct contract negotiations according to the principles set out in *SPR 385* and the Guidelines for Tender and Contract Negotiations set out in *Appendix III(J) to SPR*.

Appendix III(J) to SPR

5.4 Seek advice or assistance from GLD on commercial aspects and DoJ on legal aspects, where necessary.

PART VIII	CONTRACT DEFAULT AND DISPUTE RESOLUTION
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Issues / Tasks

- | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none">➤ Contract Non-performance➤ Contract Termination➤ Mediation and Arbitration➤ Litigation |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|

1. Contract Non-performance

- 1.1 Work with the contractor to resolve the underlying issues for non-performance.
- 1.2 For non-critical service / low severity issues, work closely with the contractor and adopt a problem-solving approach to investigate the cause of the problem and ensure that the contractor will rectify the situation.
- 1.3 For severe issue, attempt to resolve it at working level. If it cannot be resolved within a reasonable period of time, escalate it to the higher authorities.

Contracts Arranged by GLD

- 1.4 Any disputes relating to the contract must be referred to GLD as soon as possible so that appropriate remedial action will be initiated in a timely manner.
- 1.5 GLD has put in place an alert system to inform all B/Ds in case a complaint against a common user item is received.

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- 1.6 B/Ds should not enter into any correspondence with the contractor concerning any disputes, before referring the matter to GLD.

2. Contract Termination

- 2.1 Consider termination under the following scenarios:

- (a) failure to meet the delivery of goods / service performance targets for critical services repeatedly;
- (b) failure to meet a certain number of service performance targets during a specified period;
- (c) material breach of terms and conditions with the breach either irreparable or not having been remedied within a specified period;
- (d) major financial difficulties being encountered by the contractor (e.g. the contractor goes into liquidation or a petition is being filed for the bankruptcy or the winding up of the contractor's business);
- (e) failure to meet specifications / mandatory requirements or failure to acquire certain accreditation or licence or approval during the life of the contract; and
- (f) for service contracts that rely heavily on the deployment of non-skilled workers, the contractor or its permitted sub-contractor has obtained any conviction under specified offences under the relevant Ordinances (i.e. Employment Ordinance, Employees' Compensation Ordinance, Immigration Ordinance, Criminal Procedure Ordinance, Mandatory Provident Fund Schemes

Ordinance, Occupational Safety and Health Ordinance, and Factories and Industrial Undertakings Ordinance) or three (3) demerit points over a rolling period of three (3) years arising from the same contract.

- 2.2 Refer to the contract provision for details of the mechanism to terminate all or part of the contract.
- 2.3 Take appropriate actions against the contractor as provided under the contract conditions, i.e.,
 - (a) exercise the rights under the contract termination clause;
 - (b) withhold contract payment; and/or
 - (c) deduct the contract deposit paid in cash or call on the banker's guarantee, or the advance payment bond (if any), to recover the amount of costs, losses, damages or expenses suffered or incurred by the Government.
- 2.4 B/Ds may recover from the contractor all costs and expenses incurred in conducting any tender or quotation for procurement of the outstanding goods / services in connection with the default of the contractor.
- 2.5 Initiate timely claim action against the defaulted contractor (including filing a proof of debt with the liquidator if the defaulted contractor has been wound up or declared bankrupt) with a view to recovering any loss and damage suffered by the Government.

3. Mediation and Arbitration

- 3.1 Mediation and arbitration are alternatives to traditional litigation (expensive and time consuming) in dispute resolution.
- 3.2 Mediation takes place outside all the formal settings as well as court procedures. Professional mediators are responsible for coordinating and conducting meetings for disputed parties in an impartial manner, with an aim to facilitate the disputed parties to understand, discuss, and make efforts to resolve their disputes in a fair way. The mediation process is entirely voluntary and confidential.
- 3.3 Arbitration is a method for resolving disputes between parties in private as an alternative to litigation in the courts. It may be agreed by the parties before or after the dispute arises. The arbitration agreement is usually incorporated as part of the contract from which the dispute arose. However, even when there is no arbitration clause in the contract in dispute, an arbitration agreement can also be made after a dispute has arisen if the parties prefer not to go to court.
- 3.4 Check if there is any explicit requirement for dispute resolution in the contract. Dispute shall normally be referred to mediation prior to commencement of litigation. DoJ should be consulted in a timely manner and, in case of extra-contractual settlement of claims, appropriate approval should be sought in accordance with *Appendix V(B) to SPR*.

*Appendix V(B) to
SPR*

4. Litigation

- 4.1 Consider taking legal action against non-performing contractors only when all other dispute resolution methods have been exhausted.
- 4.2 Consult DoJ in the first instance when decision to take legal action against the contractor has been made.
- 4.3 B/Ds will have to prepare and keep the relevant evidence as follows to justify legal action:
 - (a) keep an audit trail of all correspondence related to the dispute or issues concerned;
 - (b) collect evidence that departments have performed all necessary steps and have fulfilled all of their contractual obligations; and
 - (c) collect evidence of non-performance or misbehaviour on the part of the contractor.

PART IX	CONTRACT CONCLUSION AND REVIEW
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Tasks

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| <ul style="list-style-type: none">➤ Exit Plan➤ Release of Contract Deposit➤ Evaluation of Contractor Performance➤ Disposal of Contract Documents➤ Tactical Review and Input for Strategic Review |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

1. Exit Plan

1.1 B/Ds should refer to the contract provisions for the specific rights of the Government upon contract termination / expiry which may include:

(a) Asset / Documentation Transfer

Immediately return to the Government all confidential information, personal data and such other information, property and materials in the possession of the contractor which was obtained or produced in the course of providing the goods / services.

(b) Continuing Service Requirements

Assist and co-operate with the Government to ensure an orderly transition of the provision of the goods / services and/or the completion of any work in progress.

(c) Knowledge Transfer

Promptly provide all information concerning the provision of the goods / services to facilitate the Government or a replacement contractor to execute the new contract.

(d) Personnel

The right of B/D or the new contractor, if necessary, to approach contractor's staff and to offer them jobs to retain the delivery capability.

1.2 B/Ds should ensure that there is adequate transition time between contracts, especially for contracts relying heavily on the deployment of non-skilled workers, by encouraging contractors to:

- (a) inform their employees properly of the termination / expiry of the contract;
- (b) make suitable arrangements for the transfer of employees to other workplaces; and
- (c) issue appropriate notices on termination of employment contract and pay all termination compensation in accordance with the Employment Ordinance (Cap 57).

2. Release of Contract Deposit

Contract Termination

2.1 B/Ds shall not

SPR 362(d)

- (a) refund the contract deposit paid in cash; or
- (b) release the performance bond (in the form of a guarantee arranged by the bank, insurance company or the parent company) or the advance payment bond (if any), to a defaulted contractor.

2.2 B/Ds may deduct from the contract deposit paid in cash or call on the banker's guarantee or the

advance payment bond (if any), to recover the amount of costs, losses, damages or expenses suffered or incurred by the Government arising from the default of the contractor.

Contract Completion

- 2.3 Upon expiry of the contract,
- (a) if the contract deposit is paid in cash, on condition that the contractor has performed and discharged all its obligation under the contract to the Government's satisfaction, the Government shall, after deducting the sums due from the contractor to the Government, return the balance of the contract deposit in cash without interest to the Contractor normally at the end of three (3) months after the expiry of the contract; or
 - (b) if the contract deposit is paid by way of a banker's guarantee, the banker's guarantee shall be discharged and released in accordance with the terms of the contract.

3. Evaluation of Contractor Performance

- 3.1 B/Ds shall evaluate the performance of their contractors:

SPR 536

- (a) at least once every six (6) months until completion of the contract and a final report within three (3) weeks after the expiry of the contract, for contracts lasting more than one (1) year; and
- (b) upon completion of the contract for contracts lasting a year or less.

- 3.2 B/Ds shall complete the Contractors' Performance Evaluation Report through the PCMS if the contract was let by GLD.

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- 3.3 B/Ds shall keep these performance records on contractors for as long as they consider necessary but in any case, not less than three (3) years upon completion of the contracts. *SPR 539*
- 3.4 B/Ds shall take into account the relevant past performance records of a contractor in considering contract variation proposal or evaluating its tender in future through the adoption of a marking scheme. *SPR 541*

4. Disposal of Contract Documents

- 4.1 Retain and store the original copy of an executed contract, and the related original security bond, banker's guarantee and insurance policy, if any, in a safe or strongroom if available or otherwise in a locked cabinet. *SPR 530*
- 4.2 Do not keep the original documents in files required for working purposes or with working files.
- 4.3 Contract documents shall be kept until six (6) years after expiry of the contract or after the settlement of any dispute, whichever is the later.

5. Tactical Review and Input for Strategic Review

- 5.1 The review should focus on operational monitoring and performance management.
- 5.2 Conduct review on the following aspects:
- (i) deliverables against specifications;
 - (ii) quality against key performance indicators or service levels;

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- (iii) delivery performance;
 - (iv) changing and/or emerging needs;
 - (v) changing market conditions;
 - (vi) users' performance in contract management; and
 - (vii) opportunities for improving efficiency.

5.3 Based on the review result and the lessons learnt, make necessary changes and improvement in the subsequent procurement.

5.4 B/Ds should institute a system for collecting and analysing results of all tactical reviews of individual procurement covering similar categories / types of goods and/or services. References should be made to these information and analyses when strategic reviews are performed at the senior management and supervisory level to improve the overall efficiency and cost-effectiveness of the procurement strategy.

Appendix 1 Abbreviations

B/D	Bureau/Department
CCGO	Central Cyber Government Office
CO	Controlling Officer
CTB	Central Tender Board
DGL	Director of Government Logistics
DoJ	Department of Justice
DPS	Demerit Point System
DSM	Departmental Stores Manager
DTC	Departmental Tender Committee
EOI	Expression of Interest
FC	Financial Circular
FSTB	Financial Services and the Treasury Bureau
FSTBCM	FSTB Circular Memorandum
GLD	Government Logistics Department
GLDTB	GLD Tender Board
GSC	Government Service Contractor
IT	Information Technology
ME	Market Engagement
MR	Market Research
OGCIO	Office of the Government Chief Information Officer
PCMS	Procurement and Contract Management System
PS(Tsy)	Permanent Secretary for Financial Services and the Treasury (Treasury)

SMEs	Small and Medium-sized Enterprises
SMS Framework	Standard Marking Scheme Framework
SPR	Stores and Procurement Regulations
TAP	Tender Assessment Panel
VFM	Value for Money
WTO GPA	Agreement on Government Procurement of the World Trade Organization

Appendix 2 Points to note when conducting Market Research / Market Engagement / Expression of Interest

The detailed procedures for conducting market research (MR) / market engagement (ME) / expression of interest (EOI) are as follows:

(1) Define target participants

Target participants may come from :

- ✧ existing / previous suppliers of the product / service or similar products/services;
- ✧ suppliers on Government Logistics Department's or bureaux/departments' supplier lists;
- ✧ key suppliers, new players, start-ups, and small and medium-sized enterprises identified by the innovation facilitators (i.e. Electrical and Mechanical Services Department (for electrical and mechanical products) and Office of the Government Chief Information Officer (for information technology products)) or other organisations with public funding (e.g. Hong Kong Science and Technology Parks Corporation, Hong Kong Applied Science and Technology Research Institute, Hong Kong Productivity Council, etc. as listed in the Guide to Engaging with the Innovation and Technology Sector published by the Efficiency Office set out at Appendix B to Annex D to Financial Circular No. 2/2019 or its subsequent updates);
- ✧ potential suppliers from the Internet; and
- ✧ nomination of suppliers / service providers by Trade Commissioners, Chamber of Commerce, industry / professional associations.

(2) Prepare MR / ME / EOI document or information to be shared and collected

(a) An MR / ME / EOI document or information may comprise the following:

- ✧ background and purpose of MR / ME / EOI;

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- ✧ description and requirements of goods/services concerned;
 - ✧ information to be shared with suppliers (e.g. innovative ideas to meet business needs and requirements, timeframe, scale of procurement);
 - ✧ information to be provided by respondents (e.g. feasibility of innovative ideas, sufficient capacity to meet the requirements, willingness to provide goods/ services to meet the requirements, product / service catalogue, price, delivery schedule, warranty, contact point);
 - ✧ date and venue for submission of information by respondents;
 - ✧ contact point of enquiries by respondents; and
 - ✧ a statement that the MR /ME / EOI is conducted on a non-committal basis.

- (b) It is not advisable to release sensitive Government information to participants / respondents when conducting MR / ME / EOI. Should it be inevitable to do so, B/Ds may request the participants / respondents to sign confidential undertaking and/or non-disclosure agreements with the Government beforehand.

(3) Engage suppliers/ Publish invitation notice

B/Ds may :

- (a) engage with suppliers through telephone/ written/ face-to-face enquiries including trade shows, meetings and pre-tender briefings;
- (b) publish invitation notices on their own websites and attach soft copies of invitation documents (if necessary) for access by potential respondents; and
- (c) send invitation notices to potential respondents by mail or fax.

(4) Response time for market research

In general, allow one (1) month for submission of responses.

(5) Analyse data collected

B/Ds may make use of the information collected from the respondents to:

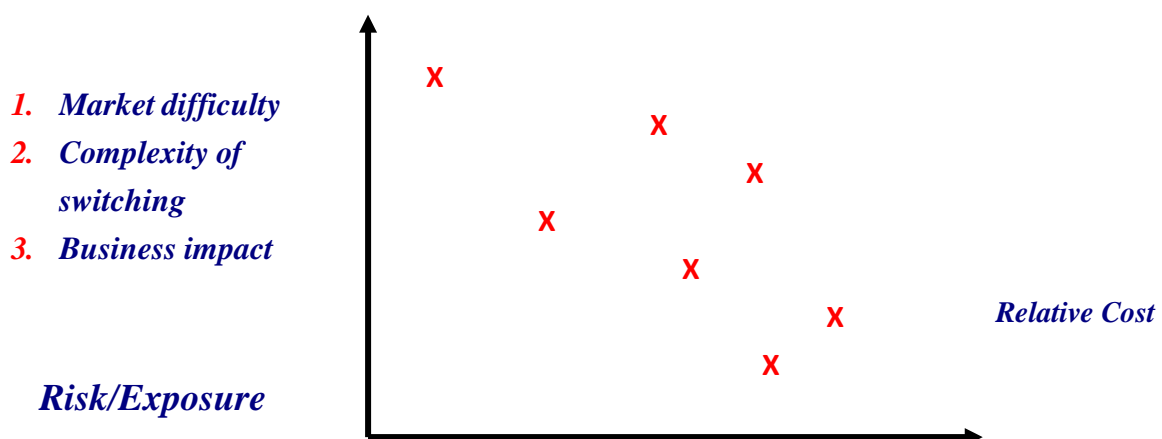
- (a) determine whether the products / services proposed could meet their needs;
- (b) invite respondents in subsequent tender exercise;
- (c) invite respondents for inclusion in the relevant supplier lists.
- (d) review if there are enough potential and interested suppliers that could meet the intended tender requirements; and/or
- (e) determine if any change in tender requirements and/or service / product specifications are required to enhance tender participation and competition.

Appendix 3 Application of Supply Positioning Tool in Developing Procurement Strategies¹

A. Setting up the Supply Positioning Analysis

The first step in developing a *Supply Positioning* analysis is to list all the goods and services which are purchased by B/D i.e. the various purchasing categories and sub-categories.

The second step is to plot each of these items on a two dimensional chart in which the x-axis represents the relative cost of the item (or category) and the y-axis represents supply exposure or potential vulnerability.



The positioning on the y-axis of a purchase/category is a function of three considerations, namely:

1. The extent of real market competition. If the supply market is truly competitive with many suppliers eager to win the business, the purchase would be positioned low on the Risk/Exposure axis. As the market becomes increasingly constrained (e.g. because of few suppliers or the operation of cartels), the purchase will be positioned progressively higher.

¹Source : 'Drafting a Procurement Strategy' – A Guide by PMMS Consulting Group

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2. The difficulty and complexity of switching suppliers or product. The easier the ability to 'switch', the lower the positioning on the Risk/Exposure axis.
 3. The potential business impact if there is a disruption for whatever reason in the supply chain e.g. the supplier going out of business, industrial action, a fire at the production facility. 'Business impact' can represent loss of profit, disruption to a key new product development programme, environmental impact, public relationship impact, the impact on relationships with key customers or the public. The larger the potential business impact, the higher the positioning on the y-axis.

The complexity and nature of typical supply chains needs to be considered when assessing market competition and the ease of switching supplier.

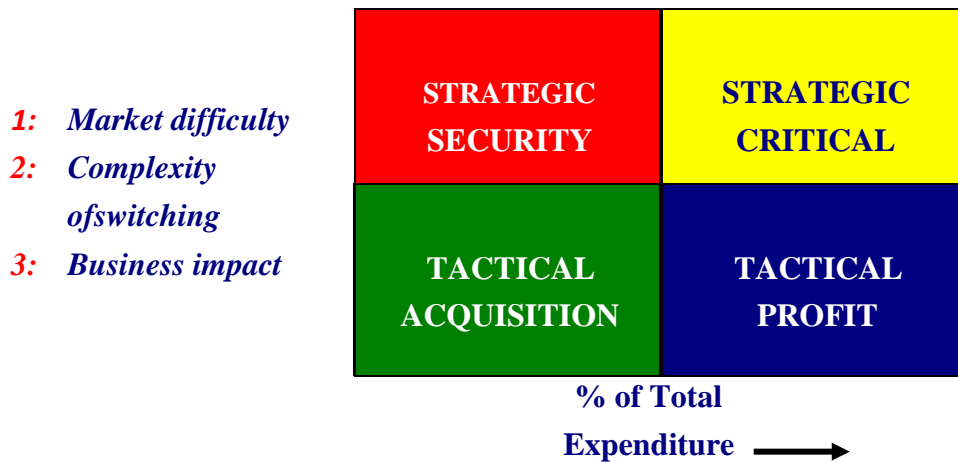
In each case B/Ds must define the y-axis according to its own situation and needs.

Percentage of Total Expenditure

The positioning on the x-axis is determined by the proportion of total expenditure (annual spend) associated with the particular purchase or category under consideration. The sum of expenditure associated with purchases/ categories to the left of the vertical line dividing Tactical Acquisition and Strategic Security from Tactical Profit and Strategic Critical (shown in the market segmentation diagram below) typically represent 5 – 10 % of total spend.

B. Supply Market Segmentation

With the initial positioning complete, the next stage is to segment the market by dividing the chart into four quadrants.



It will be seen that each of the four quadrants has been assigned a name which in part describes the nature of the purchases positioned within them.

Thus the items in the bottom left quadrant will be of low value and with a low business exposure because they have no special quality, safety, reliability or environmental implications and there are probably many suppliers in the market able to meet demand. These items are classified as *Tactical Acquisition*.

The items in the top left-hand quadrant are also of low value but in this case, there are quality, safety, reliability or environmental considerations together with a shortage of product or suppliers. Included in this category, which is called *Strategic Security*, might be goods obtained from a monopoly supplier or items with very tight or ‘bespoke’ specifications. These items are critical to the operation but are low in cost.

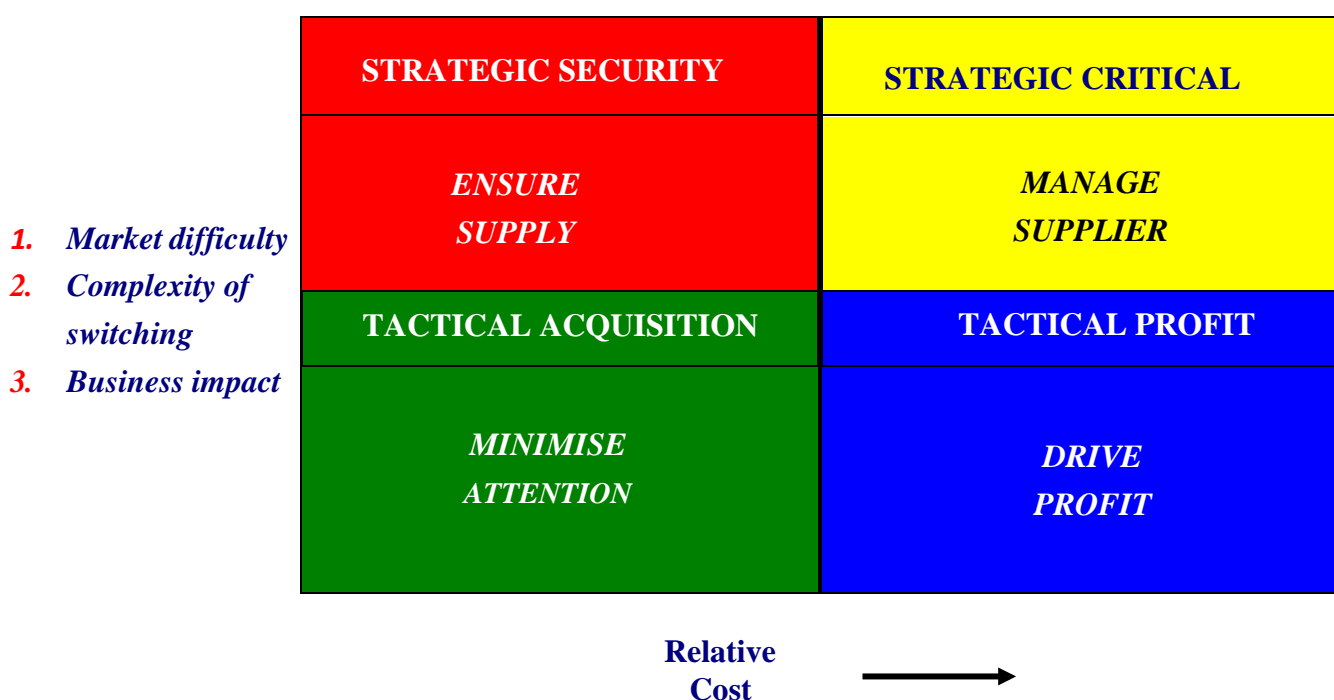
The bottom right quadrant contains items which are of relatively high cost but where there are no quality, safety, reliability or environmental issues and where there are likely to be plenty of suppliers. These items are classified as *Tactical Profit*.

Finally, the items positioned in the top right quadrant are classified as *Strategic Critical*. They are high cost and either have significant quality,

safety, reliability or environmental considerations or are sourced from a difficult market in which there are relatively few supplies and suppliers. As the name implies, these are critical to the operation of the department.

C. Purchasing Goals

Purchases positioned in the four quadrants have considerably diverse characteristics. As such, the purchasing goals and objectives will be quite different in each of the quadrants.



A large number of purchases fall into the category of *Tactical Acquisition*. These items, being of low value and carrying low business risk, are those on which the minimum amount of time should be spent. The objective will be to automate, simplify and/or delegate the purchasing processes as far as is possible and to minimise the attention which they need to be given.

Strategic Security purchases, whilst being of low value, are nevertheless critical to the sound operation of the business. Here, the major goal will be to ensure supplies. Nevertheless, these items should be kept under

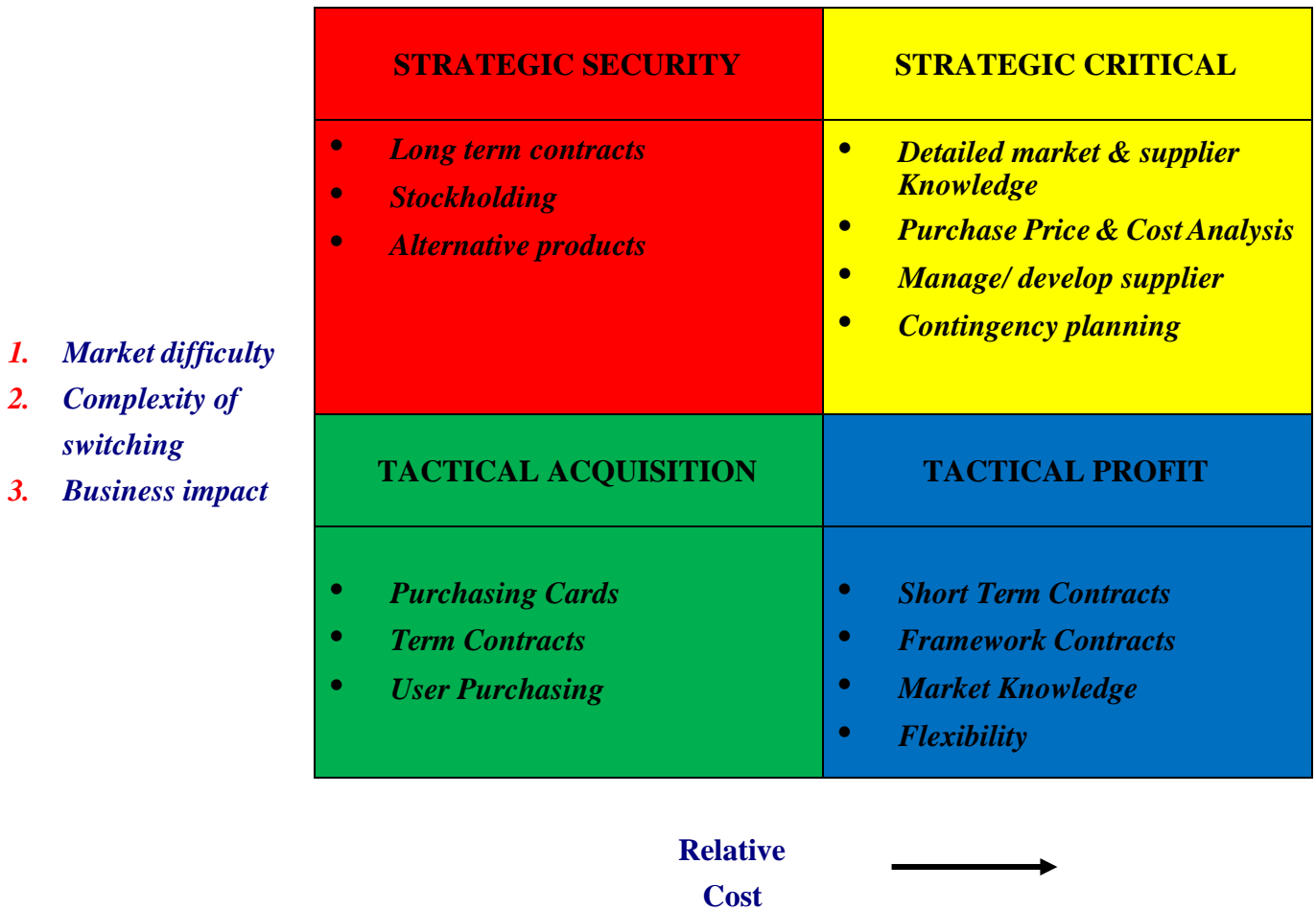
frequent review to ensure that they do not become a major cost item (and thus move to the right) and efforts should be made to find ways of being able to reposition *Strategic Security* purchases into the *Tactical Acquisition* quadrant, for example, by moving away from a bespoke specification to a proprietary product. Buyers will need to keep close to the supply market, watching out for movements in the supplier base and technical innovations.

Tactical Profit items are of high cost but have no major complications with respect to quality, safety, and reliability. In addition, there will be an adequate number of suppliers operating in a competitive marketplace. It is in this area that buyers can seek opportunities to cut cost through innovation and competition. With a competitive supply market, they can afford to take risks. Buyers will need to be very knowledgeable of the supply market within which they are operating.

The situation in the last category, ***Strategic Critical***, is quite different. These purchases are of high cost and so every effort has to be made to reduce their financial impact but, at the same time, it is not possible to trade in the manner suggested for *Tactical Profit*. It will be essential to ensure availability of supply but close price management will also be necessary. All such purchases must be kept under continuous review, hopefully with the objective of finding new suppliers or overcoming some of the special considerations which prevent the use of competition. Buyers will need to keep in very close touch with the supply market, monitoring supply/demand balances and vendor dependencies. Buyers will spend considerable effort in managing and developing existing suppliers to ensure that they are capable of meeting demands (currently and in the future) and to progressively improve supplier performance and contribution.

D. Purchasing Action Scenarios

The foregoing has concentrated on the differing goals and objectives within the four *Supply Positioning* quadrants. It is now possible to develop the concept further to examine the appropriate purchasing actions which might be taken in support of these goals.



Taking the quadrants in the same order as before results in the following:

Tactical Acquisition

The main objective here is to simplify as far as possible the entire sourcing process and have as few people as possible involved in it. This can be achieved in a number of ways:

- Allowing users to make direct one-off purchases without the need to refer to central procurement. Thus, instead of completing a requisition to be passed to central procurement for action, the user

may complete a simplified purchase order. Procurement's role is to create and implement a simplified purchase order process which is easy to use but at the same time creates records of the transactions for control purposes and subsequent analysis.

- The creation by central procurement of 'Term Contracts' or 'Blanket Orders'.
- Use of purchasing cards.
- Grouping together a number of small items into a larger package and establishing one supplier to handle all of them.

Overall, the emphasis in this *Tactical Acquisition* area should be to make it as easy as possible for the user to obtain the goods or services required using simple, low cost procedures and systems. Central procurement's role is primarily to work closely with internal customers to develop and put in place such user friendly processes thereby ensuring that the procurement focus is directed to those areas where central procurement's involvement and expertise really can contribute to the efficient and effective operation of the department.

Strategic Security

In the *Strategic Security* quadrant, the emphasis should be on longer term contracts with the use of indices and formulae to fix prices and the setting up of buffer stocks to achieve security of supply. Both indexation and buffer stocks are reasonable propositions in this scenario where the annual cost of items is very low and thus the search for competitive value for money is not paramount.

Examples of *Strategic Security* purchases could be bespoke software, spares, safety equipment, specialist consultancy services or key product components.

Tactical Profit

In contrast, the priority within the *Tactical Profit* category will typically be on shorter term contracts to enable the buyer to constantly seek out and take full advantage of lower cost suppliers. Buyers will pursue a very active sourcing policy to find new suppliers or new products. They will be driven by the need to make a significant contribution to reduce expenditure in this premium area.

It should be noted that shorter term contracts are not always appropriate for *Tactical Profit* purchases. An example here could be in-house catering. This is usually a *Tactical Profit* purchase because of the number of catering companies capable of providing this service and the relatively low associated business risk. However, there is a fairly steep learning curve for any new supplier as it becomes familiar with the requirements of the department and its staff. As such, this is not a contract that lends itself to a change of supplier every year and this type of in-house catering contract could typically be of (say) 3 years' duration.

Typical *Tactical Profit* purchases could include travel, temporary staff, vehicles, petrol, in-house catering, energy/utilities, building maintenance, PCs and telephone tariffs.

Overall, the emphasis in the *Tactical Profit* quadrant will be to assist margin; that is to take full advantage of market competition to obtain competitive purchase prices in order to reduce expenditure.

Strategic Critical

The *Strategic Critical* category will require the highest level of procurement skills. In some circumstances, long term contracts may be very suitable, but in others medium term contract lengths would be preferred. Buyers will need to obtain detailed information on individual suppliers and be seeking to continuously develop them to mutual advantage. It is in this area where the 'partnership' concept (or 'strategic alliances') can most effectively be employed. Price will need to be closely monitored and controlled. All of the purchases will need to be kept under continuous review to ensure that suppliers can continue to supply and that prices are kept within reasonable bounds.

Overall, the emphasis in this *Strategic Critical* quadrant will be to assist competitiveness. This is wider than just price advantage and would include rapid product innovation, earlier time to market and superior product quality.

Appendix 4 Checklist of Key Requirements for Drawing up Marking Schemes

Requirement	
I. Before Drawing up a Marking Scheme	
1.	You have adopted the Standard Marking Scheme Framework (SMS Framework) to formulate the marking scheme and ensure that it is clear and objective for tender evaluation so as to provide a level playing field for tenderers and encourage innovative suggestions. You have also borne in mind user-friendliness and ensured that the marking scheme is commensurate with the nature, scale and value of the tender concerned.
2.	You have made reference to the Guidelines for Adopting a Marking Scheme at <i>Appendix III (G) to Stores and Procurement Regulations</i> (SPRs), Financial Circular (FC) No. 2/2019 or its subsequent updates and the Financial Services and the Treasury Bureau Circular Memoranda (FSTBCM) No.12/2020 (as may be updated from time to time).
3.	You have reviewed the number of marking schemes in the pipeline and combined/ standardised those for contracts of similar nature.
4.	You have considered possibilities for adopting innovative suggestions, assess their potential benefits, and allocate sufficient technical weightings in the marking schemes to facilitate that.
5.	For tenders acquiring services that rely heavily on the deployment of non-skilled workers, you have followed the SMS Framework, made reference to FC No. 3/2019 unless otherwise approved by the relevant tender board or Departmental Tender Committee (DTC).

Requirement	
6.	<p>You have clearly distinguished amongst the terms “Essential Requirements”, and “Desirable Requirements” in the tender provisions according to the following guidelines:</p> <p><u>Essential Requirements</u> include essential components without which a tender should be deemed non-conforming upfront. These requirements should be kept to the absolute minimum. To encourage competition and minimise entry barriers (particularly for start-ups and small and medium-sized enterprises), as a general rule, tenderers’ experience should not be set as an essential requirement in non-works tenders. If it is absolutely necessary, prior approval must be sought from the relevant tender board or DTC for procurement adopting marking scheme under tendering procedures, or public officers (normally at directorate level) designated by the Controlling Officer for procurement not adopting marking schemes under tendering procedures.</p>
	<p><u>Desirable Requirements</u> include practicable innovative suggestion(s) which are not a “must” but “nice-to-have” in the tender offers for which extra marks can be awarded in the marking scheme according to the level of commitment undertaken by the tenderers.</p>

Requirement	
7.	<p>You have determined and clearly set out the different stages of tender assessment.</p> <p>For example, a typical tender assessment should involve the following stages:</p> <ul style="list-style-type: none"> • <i>Stage I - Completeness Check on the Tender Offers Submitted against the Terms of Tender.</i> • <i>Stage II - Compliance with the Essential Requirements</i> • <i>Stage III - Technical Evaluation</i> • <i>Stage IV - Price Evaluation</i> • <i>Stage V - Calculation of the Combined Scores (i.e. the sum of the weighted price and weighted technical scores)</i> <p>If the “Stage I Completeness Check” is set out as a self-contained condition of tender, it may not be included in the marking scheme.</p>
II. Drawing up a Marking Scheme	
8.	<p>Following the SMS Framework, you are adopting:</p> <ul style="list-style-type: none"> (i) the range of 50% - 70% technical against 30% - 50% price weightings; (ii) the minimum percentage of technical marks for assessing innovative suggestions as per FC No. 2/2019 or its subsequent updates; and (iii) the permitted range of marks in respect of different assessment criteria. <p>If not, please go to Item 9 below.</p>
9.	<p>You have sought the approval of the relevant tender board or DTC with justifications for any deviation from the SMS Framework, including non-compliance with requirements set out in the SMS Framework.</p>
10.	<p>In devising the technical marks allocated to the assessment of tenderers’ proposed wages, it is important to pay due regard to financial prudence and value for money.</p>

Requirement	
	<i>Stage I –Completeness Check</i>
11.	You have clearly stated the requirements for tenderers to enclose all the information and documents required for technical and price assessment in separate sealed envelopes with clear indication that they contain the relevant information ¹ .
12.	You have clearly stated in the tender provisions which items must be submitted on or before the tender closing date, and the consequences of not submitting them under the Terms of Tender, i.e., will render a tender invalid as a result of “non-compliance with the Terms of Tender”. Information relating to factual information with no room for manipulation by a tenderer by virtue of late submission (e.g. documentary proof for tenderers’ experience claims) should not be included as part of the completeness check.
	<i>Stage II - Compliance with the Essential Requirements</i> <i>The setting of essential requirements is not a must in a marking scheme. However, if essential requirements are set, the following checklist will be relevant:</i>
13.	You have considered whether an output-based approach instead of an input-based approach should be adopted in tender evaluation and contract monitoring.
14.	You have critically reviewed the essential requirements (such as mandatory features set out in the specification of goods/services, possession of certain types of licence, etc.) and are satisfied that none of them could be placed under Specifications or Conditions of Contract for future compliance by the successful tenderer in executing the contract instead of being set as entry requirements for tender assessment.
15.	All the essential requirements can effectively and objectively screen out unqualified tenderers by a simple yes/no assessment without involving any qualitative evaluation.
16.	The essential requirements are realistic and would not be overly demanding or severely limiting competition. They are limited to those which are essential to ensure tenderers possess the capability to fulfil the contract.
17.	The essential requirements are clearly and carefully worded to avoid ambiguity which may invite complaints against the Government or challenges against the tendering process/outcome.
18.	All the essential requirements are either grouped together or referred to by paragraph numbers in one single section of the Terms of Tender for tenderer’s easy reference.

¹ Use of separate sealed envelopes for technical and price proposals should not be specified as an “essential requirement” as stipulated in paragraph 6(c) of *Appendix III(F) to SPR*.

Requirement	
19.	You have used wording such as “shall” and “must”, instead of “may” or “is required” or “should”, in the relevant tender provisions which set out those essential requirements to clearly reflect their mandatory nature.
20.	You have clearly stated in the tender provisions the consequence of non-compliance with any of the essential requirements, i.e. the tender will be invalid and will not be further considered.
21.	You have tested those essential requirements under different scenarios to ensure clarity in application.
Stage III - Technical Evaluation	
22.	To keep marking schemes simple, for contracts with a value below \$100 million, the marking scheme (excluding appendices) should comprise not more than ten (10) assessment criteria / sub-criteria and should be contained within ten (10) pages. For contracts exceeding \$100 million (usually with more complex requirements), no more than 20 assessment criteria / sub-criteria and 20 pages are allowed.
23.	The criteria chosen for awarding quality marks are relevant to the selection of the best technical offer from tenderers.
24.	The distribution of marks/weightings amongst the assessment criteria is appropriate and in accordance with their relative importance.
25.	The distribution of marks amongst individual assessment criteria is clearly stated in the marking scheme with consecutive intervals and there is no missing link or overlap between the intervals.
26.	The assessment criteria are objective and as far as possible quantifiable and do not consist of vague or subjective descriptions such as “meaningful”, “sufficient”, “fairly”, “good”, “impressive” and “poor”.
27.	You have checked to avoid putting double/multiple attributes under the same assessment criterion with one overall mark or putting the same attribute under different assessment criteria in order to minimise confusion and difficulty in assessment.
28.	The assessment criteria adopted in different contracts within the same B/D should also be standardised as appropriate.
29.	<i>If you must put double/multiple attributes under the same assessment criterion:</i> you have stated in the tender document how the assessment under different combinations will be carried out with illustrative examples given.
30.	The proposed marking scheme has clearly set out the kind of standards/qualifications that will be considered acceptable and whether equivalent standards/qualifications will also be accepted.
31.	The standards/qualifications quoted in the marking scheme are common to the relevant trade/industry and/or internationally recognised.

Requirement	
32.	No overall passing mark shall be allowed. If it is necessary to reflect the minimum acceptable level of technical standard in accordance with the actual needs of the contract with due regard to the effect on competition, you may set a passing mark for the whole of Section A or any individual assessment criteria under Section A (after excluding the marks for innovative suggestions) of the SMS Framework. However, the passing mark shall not be more than 25% of the respective full mark of Section A or individual assessment criteria (excluding the marks reserved for innovative suggestions).
33.	Where appropriate, you have given guidelines with examples to assist tenderers in preparing quality tenders and to facilitate tenderers' understanding as to what is required and what would score higher marks.
34.	The formula for calculating the weighted technical score is clearly set out in the marking scheme and tender document, including how decimal places are handled.
35.	If submission of management/work/supervision/contingency plan(s) is necessary for tender evaluation, you should: <ul style="list-style-type: none"> (a) avoid unnecessary/excessive involvement in the staff management functions of the tenderers or contractors; ensure that the information required for individual plans has been included in the tender document to facilitate tenderers in compiling the plans; (b) limit the types and details sought for each plan to the minimum necessary, and consider imposing a page limit; and (c) ensure that the level of detail sought is not disproportionate with the resources available for contract management, as tender submissions are binding after contract award.
36.	Double scoring of labour benefit measures as innovative suggestions in the SMS Framework should be disallowed.
37.	If acceptance of any innovative suggestion to be of both Type I and Type II and scores it twice in the assessment, justifications should be provided and recorded in the tender report.
	<i>Stage IV - Price Evaluation</i>
38.	The price components, method for price assessment and the price score formula in the tender document are clearly stated.
39.	The price assessment methodology and calculation formula for the weighted price score are fair and clear, including how decimal places are handled.
40.	If different modes of charging/payment are permitted in tender offers (e.g. arising out of remote locations requirement, different delivery methods/timing, different payment schedules, different charging formulas instead of the one stipulated in the tender document, inclusion of price adjustment formula), such have been clearly stated in the tender document.

Requirement	
41.	<i>If different modes of charging/payment are not allowed:</i> The tender document has set out clearly that an alternative charging/payment scheme proposed will render a tender offer non-conforming and invalid.
42.	<i>If different modes of charging/payment are allowed:</i> The tender document has clearly set out how different proposals could be compared and assessed in the price evaluation on an equitable and like-with-like basis.
43.	You have considered if the one-off and whole-life costs are to be taken into account in the price assessment for the procurement of equipment or information technology systems or items that would have recurrent consequences, and if so, how.
44.	The tender document has clearly indicated if bidding in foreign currencies ² is allowed.
45.	<i>If bidding in foreign currencies is allowed:</i> The tender document has set out clearly the currency conversion method for tender price assessment. Relevant guidelines are set out in SPR 355(c) .
46.	<i>If bidding in a foreign currency is not allowed:</i> The tender document has set out clearly the consequence of tenderers submitting bids in a foreign currency.
47.	<i>If future payments are taken into account in the price assessment:</i> The tender document has clearly set out whether net present value methodology will be used to discount future payments for price comparison purpose.
<i>Stage V - Calculation of the Combined Scores</i>	
48.	The method or formula for working out the combined technical/price score is clearly set out in the tender document, including how decimal places are handled.
<i>General Points</i>	
<i>Information on marking scheme to be included in the tender document</i>	
49.	You have clearly stated in the tender document the use of a marking scheme in tender evaluation, including the full set of marking scheme and detailed evaluation criteria, to assist tenderers in preparing their tenders and to forestall future disputes.

² Prior approval of the Permanent Secretary for Financial Services and the Treasury (Treasury) is required if bidding in foreign currencies other than US dollars is allowed for a tender costing HK\$10 million or more. [SPR 355\(b\)](#) is relevant.

Requirement	
50.	<p>To facilitate tenderers' preparation of competitive and quality tender submission, you have reviewed whether the following information as set out in the marking scheme has been included in the tender document:</p> <ul style="list-style-type: none"> (a) the technical to price assessment weighting; (b) detailed descriptions of each assessment criterion/sub-criterion; (c) marks or weighting assigned to each of the assessment criteria/sub-criteria; (d) marking standard of each assessment criterion/sub-criterion; (e) passing mark for the whole of Section A of the marking scheme developed within the SMS Framework or any individual assessment criteria under Section A (excluding the marks reserved for innovative suggestions); and (f) formula for calculating the weighted technical score, weighted price score and combined score.
51.	If the testing of tender samples, demonstration or presentation conducted by tenderers will form part of the technical evaluation, the requirements and the consequences of non-compliance have been clearly stated in the tender document.
52.	The tender document has clearly set out the requirements for tenderers to submit documentary proof to substantiate their claims of experience, expertise or qualifications in their tender offers.
53.	<p><i>If documentary proof is required:</i></p> <ul style="list-style-type: none"> (a) There are tender provisions which clearly differentiate between the documents which must be submitted together with the tender on or before the tender closing date in order for the tender to be further considered and those which may be submitted after the tender closing date (but within a period to be specified by the Government) as they are factual information that cannot be changed and will not affect compliance or otherwise with the essential requirements. (b) The consequences of non-submission of those documents on or before the tender closing date and/or non-submission within the specified period have been clearly stated in the tender document.
54.	<i>Length of entire marking scheme and page limit on tender returns</i>
	<ul style="list-style-type: none"> (a) You have observed the guidelines on the length of the entire marking scheme as stipulated in Item 22 of Stage III above.

Requirement									
	<p>(b) To speed up tender evaluation,</p> <p>(i) you should shorten and simplify the tender invitation document; and</p> <p>(ii) you may consider imposing a page limit on the length of tender returns as follows:</p> <table border="1"> <tr> <th>Nature of Tender</th><th>Page Limits on Tender Returns</th></tr> <tr> <td>Non-complicated, standard or low-valued (below \$50 million in this context)</td><td>≤ 50 pages</td></tr> <tr> <td>Complicated or involving higher value</td><td>≤ 100 pages</td></tr> <tr> <td>Highly complicated</td><td>≤ 200 pages</td></tr> </table> <p>(Note: pages in A4 size)</p> <p>If a page limit is imposed, you have clearly stated in the tender document whether those pages exceeding the page limit will be considered in tender evaluation; if yes, whether marks will be deducted from the total marks for technical assessment for each excessive page (subject to a specified maximum of marks to be deducted).</p>	Nature of Tender	Page Limits on Tender Returns	Non-complicated, standard or low-valued (below \$50 million in this context)	≤ 50 pages	Complicated or involving higher value	≤ 100 pages	Highly complicated	≤ 200 pages
Nature of Tender	Page Limits on Tender Returns								
Non-complicated, standard or low-valued (below \$50 million in this context)	≤ 50 pages								
Complicated or involving higher value	≤ 100 pages								
Highly complicated	≤ 200 pages								
	<i>Counting of previous experience</i>								
55.	You are mindful that more experience does not necessarily give better performance. You have critically reviewed the experience requirements and set appropriate score for this assessment criterion.								
56.	When joint ventures (JVs) ³ are common in the market for the types of goods or services under acquisition, the tender document has clearly set out whether and if so, how the previous experience of shareholders/participants of a current JV (incorporated or unincorporated) in a past JV will be counted.								
57.	The tender document has clearly stated if the experience of a tenderer as a sub-contractor of previous contract(s) is to be counted, and if so, how.								
58.	The tender document has clearly stated if the experience of sub-contractors of a tenderer is to be counted, and if so, how.								

³ If JVs are not common in the market for the types of goods or services under acquisition, there is no need to specify complicated rules for counting a JV tenderer's experience. Memo of "Tender for Contracts Involving Joint Ventures" from the Secretary for Financial Services and the Treasury (SFST) of 5 October 2012 is relevant.

Requirement	
59.	The tender document has stated clearly that both local experience and experience gained outside Hong Kong are to be counted. If it is considered that only local experience should be counted, there should be good reasons that such requirement is essential in order to ensure the tenderers' capability to fulfil the contract and is not discriminatory against overseas or Mainland tenderers. Where necessary, legal advice should be sought to confirm that such a requirement is not in contravention of the Agreement on Government Procurement of the World Trade Organization (WTO GPA).
60.	You have kept the number of key personnel with experience to be assessed in the marking scheme to the absolute minimum.
61.	The tender document has set out clearly the cut-off dates (e.g. tender closing date or extended tender closing date) for counting the experience and assessing the past performance of tenderers. You should adopt a consistent approach in setting the cut-off dates for tender assessment as set out in SFST's memo for "Cut-off Dates for Tender Assessment" dated 8 August 2014.
62.	The tender document has set out clearly the method for counting tenderers' experience (e.g. by calendar years (continuous, aggregate), by number of contracts, by value of contracts, how overlapping contracts will be counted). In case the tenderers' experience is counted by aggregate years, the required years of experience is to be counted in days, i.e. "an aggregate of at least 2 years" is equivalent to have accumulated no less than 730 (i.e. 365 days x 2) days of experience. In case the number of contracts is used to count tenderers' experience, the tender has stated clearly what types of contracts will be counted (e.g. contract value, scale, nature, duration, completed and/or in the pipeline).
	<i>Binding the tenderer to and enforcing the better terms it offers</i>
63.	You have checked to ensure that: (a) there is a tender term or condition of contract to bind the successful tenderer to the better terms it offered in its tender, especially when such better terms offered will result in higher marks for the successful tenderer in the technical assessment (other better terms offered by the successful tenderer for which additional marks have not been given should also be made binding); and

Requirement	
	(b) the better terms committed by the successful tenderer under the marking scheme are enforceable as part of contract management (you should take into account the enforceability of these better terms and the administrative costs involved when developing the assessment criteria in the first place).
III. Before Adopting Marking Scheme or Seeking Approval to Adopt Deviations from the SMS Framework	
64.	You have made an assessment that the marking scheme will not unduly discourage market response, e.g. whether the time allowed for submission of samples is reasonable even for newcomers, the cost of independent laboratory test is not excessive as compared with the estimated value of the contract.
65.	You have reviewed the proposed marking scheme and evaluation criteria again to ensure that they meet the basic government procurement policy and principles specified in SPRs 106-109 as well as the requirements of WTO GPA , where applicable, before seeking approval from the relevant tender board or DTC to adopt the proposed marking scheme for tender evaluation.
66.	You have gone through the marking scheme and relevant terms of tender / conditions of contract again to ensure accuracy and consistency of language, cross-reference, facts, spellings and use of defined terms throughout.
67.	You have made an assessment that the proposed deviations from the SMS Framework will not favour incumbent contractor (e.g. experience in working with the department)
68.	In your submission in seeking approval from the relevant tender board or DTC for the proposed deviations from the SMS Framework, you have included the following information where appropriate: <ul style="list-style-type: none"> (a) a brief description of the product or service to be obtained; (b) the estimated contract value; (c) tentative tender program, findings of a market research (if any), details of the deviations from the SMS Framework and justifications for such deviations, if any; (d) the estimated number of potential tenderers and the basis of estimation; (e) the proposed weighting for technical and price assessments and justifications; (f) assessment criteria and their relative weightings with the rationale behind; (g) passing marks for individual assessment criteria, if any; (h) the basis of recommendation (e.g. the offer that meets all the essential requirements, attains the passing marks (if any) and obtains the highest combined score under the marking scheme will normally be recommended for acceptance);

Requirement	
	(i) in case there is restriction on the number of contracts to be awarded to a single contractor, you have set out the acceptance rules. Relevant guidelines are set out in the then Secretary for Treasury's memo ref. (107) in FT 53/88 Pt.2 of 8 February 2002; and (j) declaration of interest.
69.	You have made an assessment that the proposed deviations from the SMS Framework will not favour incumbent contractor (e.g. experience in working with the department) and/or discourage tender submissions from newcomers and competition.
IV. After Approval to Adopt Proposed Deviations from the SMS Framework	
70.	You have to observe and follow the approving authority's comments / observations before adoption of the proposed marking scheme in a tender exercise.
71.	Your tender report shall contain a paragraph advising how the approving authority's comments / observations on the proposed marking scheme have been incorporated / addressed.
72.	If you could not follow the comments made by the approving authority, you should seek the approving authority's prior approval and also explain clearly in the tender report the reasons for not fully addressing the comments.

Appendix 5 Highlights of Common Tender Provisions

Common tender provision	Points to note
Interpretation	<ol style="list-style-type: none"> 1. Provide meaning of defined terms used throughout the tender document. 2. Different forms of the term as stated in the Interpretation with the ones adopted in other parts of tender document (e.g. <u>Ready to Use</u> vs <u>ready to use</u>) may carry different meanings and subject to different interpretations.
Conditions of Tender	
Legal status of tenderer	Request tenderers to provide documents to prove the validity of their identities, legal capacities to submit tenders and enter into contracts.
Delivery/collection schedule and terms	<ol style="list-style-type: none"> 1. Set reasonable delivery time in consideration of the following : <ol style="list-style-type: none"> (a) estimated product manufacturing / service preparation lead time required; (b) number of delivery locations involved; (c) estimated transport lead time; (d) b/ds' operational needs; and (e) quantity of goods/services to be delivered. 2. Indicate the normal and the latest acceptable delivery lead time. 3. Request “as and when required” deliveries only when exact delivery dates cannot be identified at the time of issuing tender.

Common tender provision	Points to note
Delivery/collection schedule and terms (Cont'd)	4. If the product under acquisition is a strategic commodity and subject to import/export licensing control, include the import/export licensing requirements.
Packing requirement	<ol style="list-style-type: none"> 1. State the packing requirements including labelling of products, if required. 2. To be environmentally friendly, keep the packing requirements to a minimum.
Stock samples	<p>In case inspection of stock samples by tenderers is allowed, state the following :</p> <ol style="list-style-type: none"> 1. types of stock sample; 2. location of stock sample; 3. contact point for application to inspect stock samples; 4. period for inspection; and 5. a statement that where a conflict exists between the stock sample and technical specifications, the stock sample or technical specifications shall prevail.
Stages of evaluation	<ol style="list-style-type: none"> 1. For the sake of transparency, set out the stages of evaluation. 2. Follow strictly the procedures laid down in the tender document to evaluate tenders.

Common tender provision	Points to note
Tender deposit	<ol style="list-style-type: none"> 1. In accordance with <i>SPR 360</i>, a tender deposit is not normally required. 2. Acquire tender deposit normally for purchase tenders. 3. Keep the amount of tender deposit to a minimal. 4. Ensure that the length of the tender validity period is reasonable and would not unnecessarily tie up tenderers' money. 5. State the following : <ol style="list-style-type: none"> (a) amount and form (e.g. cash or cheque) of tender deposit required; (b) due date for submission; (c) venue for submission of cash deposit; (d) reasons for forfeiting tender deposit; and (e) arrangement of returning tender deposit.
Documentary requirements	<ol style="list-style-type: none"> 1. State the following : <ol style="list-style-type: none"> (a) types of documents / test reports / certificates/ information which shall be provided by tenderers for evaluation; (b) testing parameters, accredited testing bodies and validity of test reports / certificates and the timing of submission; and (c) consequence of failing to provide the documents / information as required. 2. Do not request tenderers to submit documents (e.g. management plans) which will not be used for evaluation of tenders with their offers.

Common tender provision	Points to note
Tender briefing/site visit	<ol style="list-style-type: none"> 1. Provide a proforma for completion by those who are interested in attending the tender briefing / site visit. 2. State clearly the following : <ol style="list-style-type: none"> (a) date and time of tender briefing / site visit; (b) number of participants allowed; (c) arrangement of tender briefing / site visit in case of tropical cyclone warning signal no. 8 or black rainstorm signal on that date; and (d) due date for submission of completed proforma.
Financial vetting	<ol style="list-style-type: none"> 1. In accordance with <i>SPR 370(b)(i)</i>, conduct financial vetting for the following tenders : <ol style="list-style-type: none"> (a) service contracts of a value exceeding \$15 million; or (b) contracts for the supply of goods which require also the provision of services of a value exceeding \$15 million. 2. State clearly the following : <ol style="list-style-type: none"> (a) how to select tenders for financial vetting; (b) what types of documents required to be submitted by tenderers for financial vetting; and (c) consequences of failing the financial vetting.
Checklist/summary of information/items to be submitted by tenderers	<ol style="list-style-type: none"> 1. Summarise the information/items to be submitted by tenderers as required in various tender provisions for easy reference by tenderers. 2. State the consequence of not submitting the information / items by tenderers as required.

Common tender provision	Points to note																				
Marking Scheme developed within SMS Framework	<p data-bbox="651 322 1493 427">Framework 1: For Goods, Services and Revenue Contracts (excluding services contracts that rely heavily on the deployment of non-skilled workers (“non-skilled workers contracts”))</p> <table data-bbox="699 465 1441 1021"> <tr> <th data-bbox="699 465 1078 577">Assessment Criteria (for Technical Assessment)</th><th data-bbox="1078 465 1441 577">Permitted Range of Marks out of 100 Total Marks</th></tr> <tr> <td data-bbox="699 577 1078 835">Section A - Execution Plan (for services and revenue contracts) - Technical Aspects (for goods contracts)</td><td data-bbox="1078 577 1441 835">70 – 100 (with at least 20% marks for innovative suggestions, see Remark (1))</td></tr> <tr> <td data-bbox="699 835 1078 947">Section B - Experience, Certification or Qualification</td><td data-bbox="1078 835 1441 947">0 – 15</td></tr> <tr> <td data-bbox="699 947 1078 1021">Section C – Other Specific Criteria</td><td data-bbox="1078 947 1441 1021">0 – 15 (see Remark (2))</td></tr> </table> <p data-bbox="651 1066 1294 1099">Framework 2: For Non-skilled Workers Contracts</p> <table data-bbox="699 1137 1441 1733"> <tr> <th data-bbox="699 1137 1078 1249">Assessment Criteria (for Technical Assessment)</th><th data-bbox="1078 1137 1441 1249">Permitted Range of Marks out of 100 Total Marks</th></tr> <tr> <td data-bbox="699 1249 1078 1323">I. Labour Benefits</td><td data-bbox="1078 1249 1441 1323">25 – 40 (see Remark (3))</td></tr> <tr> <td colspan="2" data-bbox="699 1323 1441 1361">II. Technical Attributes</td></tr> <tr> <td data-bbox="699 1361 1078 1547">Section A – Execution Plan</td><td data-bbox="1078 1361 1441 1547">30 – 75 (with at least 20% marks for innovative suggestions, see Remark (1))</td></tr> <tr> <td data-bbox="699 1547 1078 1659">Section B - Experience, Certification or Qualification</td><td data-bbox="1078 1547 1441 1659">0 – 15</td></tr> <tr> <td data-bbox="699 1659 1078 1733">Section C – Other Specific Criteria</td><td data-bbox="1078 1659 1441 1733">0 – 15 (see Remark (2))</td></tr> </table> <p data-bbox="651 1789 772 1823"><u>Remarks:</u></p> <p data-bbox="651 1834 1493 1939">(1) A minimum of 20% of the total marks of Section A should be reserved for innovative suggestions which may be suggested by tenderers under individual assessment criteria.</p> <p data-bbox="651 1973 1493 2007">(2) Bureaux and departments (B/Ds) may also accord marks to</p>	Assessment Criteria (for Technical Assessment)	Permitted Range of Marks out of 100 Total Marks	Section A - Execution Plan (for services and revenue contracts) - Technical Aspects (for goods contracts)	70 – 100 (with at least 20% marks for innovative suggestions, see Remark (1))	Section B - Experience, Certification or Qualification	0 – 15	Section C – Other Specific Criteria	0 – 15 (see Remark (2))	Assessment Criteria (for Technical Assessment)	Permitted Range of Marks out of 100 Total Marks	I. Labour Benefits	25 – 40 (see Remark (3))	II. Technical Attributes		Section A – Execution Plan	30 – 75 (with at least 20% marks for innovative suggestions, see Remark (1))	Section B - Experience, Certification or Qualification	0 – 15	Section C – Other Specific Criteria	0 – 15 (see Remark (2))
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Section C – Other Specific Criteria	0 – 15 (see Remark (2))																				

	<p><i>innovative suggestions under this Section in Frameworks 1 and 2 as appropriate.</i></p> <p><i>(3) B/Ds must assign at least 25 marks to assessment criterion/criteria on “wages”. This, together with other labour benefits related criteria such as “working hours”, “number of demerits points”, etc. may normally account for up to 40 marks out of a total of 100. Further increase of marks for “wages” and other labour benefits related criteria is possible, upon approval of the relevant tender board/committee.</i></p>
Schedules	<ol style="list-style-type: none"> 1. Draw attention of tenderers to relevant tender provisions in relation to different parts of schedules. 2. For price schedule, <ol style="list-style-type: none"> (a) separate tables for those essential and optional items; and (b) state the estimated quantity of goods/services required.
Specifications	<p>Take into account the following when drawing up specifications :</p> <ol style="list-style-type: none"> 1. align the Government procurement principles of open and fair competition, transparency and value for money; 2. adopt functional and performance specifications; 3. set tolerance for dimensions or other measurable characteristics; 4. allow compliance with equivalent standards; 5. consider environmental protection factors; 6. make reference to the latest market / technical information 7. consider relaxing the specifications so as to enhance competition;

Common tender provision	Points to note
Specifications (Cont'd)	<p>8. information collected in MR / ME / EOI;</p> <p>9. funding available;</p> <p>10. differentiate mandatory / desirable requirements; and</p> <p>11. make reference to <i>Appendix III(F) to SPR</i> and Environment Bureau Circular Memorandum No. 6/2015.</p>
Conditions of Contract	
Contract period	<p>1. When setting contract period, pay due regard to the administrative efforts of all parties concerned and market price fluctuation.</p> <p>2. Stipulating that contract period will end when all obligations have been performed is circular, and may not be enforceable because this may contravene some common law rules against perpetuity. Reference could be made to maintenance period, implementation period, etc.</p>
Probable requirements	<p>1. In case an exact quantity of goods/services cannot be ascertained, set a certain percentage for the variation of estimated quantity.</p> <p>2. In case more than one item is required under the same contract, allow a mixed drawing of items so as to cater for the fluctuation of quantity required during the contract period.</p> <p>3. In case the variation amount has not been approved by the tender board/departmental tender committee at the time of approving contract award, seek approval for contract variation before execution of this provision.</p>

Common tender provision	Points to note
Acceptance requirements	<ol style="list-style-type: none"> 1. State clearly the acceptance criteria for the goods/services received such as : <ol style="list-style-type: none"> (a) submission of test report issued by accredited laboratories to certify the quality of goods; (b) types of tests to be conducted; and (c) ad hoc quality check conducted by the Government. 2. State clearly the consequence of failing the acceptance test (e.g. rejection of goods/services or termination of contract).
Warranty requirements	<p>State clearly the following :</p> <ol style="list-style-type: none"> 1. duration of the warranty period; 2. responsibilities of the contractor during the warranty period; and 3. conditions for extension of warranty period, if required.
Maintenance service requirements	<p>State clearly the following :</p> <ol style="list-style-type: none"> 1. whether any local maintenance service provider is required; 2. whether the contractor is required to guarantee the supply of spare parts at the prices quoted in its offer for a certain period of time; and/or 3. the coverage of maintenance services to be provided e.g. the number of preventive maintenance service visits, the response time of corrective maintenance, etc.

Common tender provision	Points to note
Payment term	<ol style="list-style-type: none"> 1. It is a standard practice of the Government to make payment to contractor after acceptance of goods/services. 2. Avoid advance payment by the Government as far as practicable. If it is inevitable to do so, request contractor to submit advance payment bond in the equivalent amount with a view to securing recovery of the relevant payment in case of contract default. 3. Advance/stage payment may be made under the following circumstances: <ol style="list-style-type: none"> (a) it is the business norm of a particular trade to receive advance payment; (b) the contractor requires substantial initial capital investment (e.g. aircraft); or (c) duration of a project (e.g. information technology (IT) system) is long. 4. In case of stage payment, the amount to be paid in each stage should be commensurate with the work completed by the contractor.
Liabilities of contractor	<ol style="list-style-type: none"> 1. Under normal circumstances, the liabilities of contractor should be unlimited. The contractor should be liable to indemnify the Government for the following in the conduct of the contract : <ol style="list-style-type: none"> (a) damage / loss of Government properties; (b) injuries / death of Government officials caused by the contractor's fault; (c) claims against the Government in respect of intellectual property rights of goods/services under the contract;

Common tender provision	Points to note
Liabilities of contractor (Cont'd)	<p>(d) breach of any provision of the contract by the contractor; and</p> <p>(e) negligence or willful misconduct of the contractor in the conduct of the contract.</p> <p>2. In respect of liability requirements for IT contracts, make reference to Office of the Government Chief Information Officer's memo "Unlimited liability for IT contracts" dated 12.7.2016.</p>
Price adjustment mechanism	<p>May set a price adjustment mechanism for the following term contracts :</p> <ol style="list-style-type: none"> 1. contractor is obliged under the contract to provide recurrent services (e.g. maintenance services) over a certain period of time; 2. the prices of products/raw materials for making up the products fluctuate frequently.
Liquidated damages	<ol style="list-style-type: none"> 1. It is common to set liquidated damages for delay of delivery of goods/services or completion of project. 2. Set the liquidated damage based on the estimated loss suffered by the Government. 3. Seek the Department of Justice's advice in case of doubt.
Glossary of terms	<p>If various technical terms with abbreviations are used in a tender document, provide a detailed glossary so as to facilitate better understanding of the tender document by tenderers. Otherwise, state the full description of the terms to avoid misinterpretation.</p>

Appendix 6 Sample Letter of Conditional Acceptance

Letterhead of the Bureau / Department

[Date]

By Registered Mail & Fax
[fax no. of selected tenderer]

[name of selected tenderer]
[address of the selected tenderer]

Dear Sir/Madam,

Tender Ref.: []
Contract No.: []
[Tender Subject]

We refer to your tender dated [] and your letter dated [] and subsequent correspondence dated [] (“your Tender”). We are pleased to advise you that your Tender for [the supply of [] as per Technical Specifications*, sample submitted* and summarised at Appendix* at a Total Estimated Goods Price/an Estimated Contract Price of HK\$[] is hereby accepted. In accordance with Paragraph [] of [Conditions]/[Terms]* of Tender, this letter of acceptance (together with your Tender) shall constitute a binding contract between the Government and you.

In accordance with Clause [] of the *General/Special Conditions of Contract, you are required to pay a Contract Deposit of HK\$[], being [two]/[five]/[six]* percent [(2%)]/[(5%)/(6%)]* of the Total Estimated Goods Price/Estimated Contract Price by way of a banker's guarantee in the form attached. The original copy of banker's guarantee shall be duly executed by a bank that holds a valid banking licence granted under the Banking Ordinance (Chapter 155 of the Laws of Hong Kong) and must be delivered to []. When the banker's guarantee is executed under power of attorney, a photocopy of the power of attorney certified on each page by a Hong Kong solicitor that it is a true and complete copy of the original must be submitted together with the bank's guarantee. Please use the standard form of the banker's guarantee as enclosed. Any other form will not be accepted.

In accordance with Clause [] of the [Conditions]/[Terms]* of Tender, only upon the receipt of Contract Deposit under Clause [] of the [Conditions]/[Terms]* of Tender, the Government will enter into the Contract with you by signing the [Articles of Agreement]. In other words, there is no Contract between the Government and you at this stage. Please therefore continue to treat all tender related information as restricted in nature.

Please complete, sign and return the attached [Part – Articles of Agreement] in triplicate. All three copies of [Articles of Agreement] shall be original and photocopies are not acceptable. Upon receipt of your signed [Articles of Agreement] and the Contract Deposit to the Government's satisfaction, the Government will sign the [Articles of Agreement] and send it together with a complete set of the Contract in the form as approved by the Government for your safe-keeping and record.

Your attention is drawn to Clause [] of the [Conditions]/[Terms]* of Tender that if you fail to fulfil all or any of the conditions mentioned in Clause [] of the [Conditions]/[Terms]* of Tender (unless and save to the extent they are waived by the Government in writing, if any), or fail to enter into the [Articles of Agreement], the conditional acceptance of tender will become void and be of no further force. Without prejudice to other rights and remedies of the Government, the Government may exercise the rights in accordance with Clause [] of the [Conditions]/[Terms]* of Tender.

Please note that [Name], [Post] is the Government Representative for the purposes of the Contract. In case of general enquiries, please contact [Name] on [Tel. No.].

Please acknowledge receipt of this letter [by signing and returning the duplicate to us].

Yours faithfully,

()
for [The Controlling Officer of the Bureau / Department]

c.c. [user division / section]
[Tender Approving Officer] [Accounts Section]
Contract file

Note : the provision in the [] will have to be changed depending on the requirements of each tender.

* Please delete as appropriate

Appendix 7 Sample Letter of Acceptance

Letterhead of the Bureau / Department

[Date
] By Registered Mail & Fax
[fax no. of selected tenderer]

[name of selected tenderer]
[address of the selected tenderer]

Dear Sir/Madam,

Tender Ref.: []
Contract No.: []
[Tender Subject]

We refer to your tender dated [] and subsequent correspondence dated [] (“your Tender”). We are pleased to advise you that your Tender for [the supply of [] as per Technical Specifications*, sample submitted* and summarised at Appendix* at Total Estimated Goods Price/an Estimated Contract Price of HK\$[] (with)*) is hereby accepted. In accordance with Paragraph [] of [Conditions]/[Terms]* of Tender, this letter of acceptance (together with your Tender) shall constitute a binding contract between the Government and you.

[If contract deposit by cash]

In accordance with Clause [] of the [General] / [Special] Conditions of Contract, you are required to pay a Contract Deposit of HK\$[], being [two]/[five]/[six]* percent [(2%)]/[(5%)]/[(6%)]* of the Total Estimated Goods Price/Estimated Contract Price within [] days from []. The Contract Deposit should be paid either in cash or by cashier order in favour of the Government of Hong Kong Special Administrative Region. A Demand Note for the Contract Deposit will be sent to you by our Accounts Section in due course.

[If performance bond by banker's guarantee]

In accordance with Clause [] of the [General] / [Special] Conditions of Contract, you are required to pay a Contract Deposit of HK\$[], being [two]/[five] / [six]* percent [(2%)]/[(5%)]/[(6%)]* of the Total Estimated Goods Price/Estimated Contract Price by way of a banker's guarantee in the form attached. The original copy of banker's guarantee shall be duly executed by a bank that holds a valid banking licence granted under the Banking Ordinance (Cap. 155 of the Laws of Hong Kong) and must be delivered to the Accounts Section of [Name of the Bureau / Department] at [Address] within [] days from []. When the banker's guarantee is executed under power of attorney, a photocopy of the power of attorney certified on each page by a Hong Kong solicitor that it is a true and complete copy of the original must be submitted together with the banker's guarantee. Please use the standard form of the banker's guarantee as enclosed. Any other form will not be accepted.

Your attention is drawn to Clause [] of the [General] / [Special] Conditions of Contract that if the Contractor fails to pay the Contract Deposit by the stipulated deadline, the Government may terminate the Contract immediately or *deduct from any sum due or payable by the Government to the Contractor from time to time, such amount to serve as the Contract Deposit payable to the Government/withhold from any sum due or payable by the Government to the Contractor from time to time, such amount which in aggregate does not exceed the amount of Contract Deposit payable to the Government.

The duplicate copy of the contract document including the ["Memorandum of Acceptance"]/["Articles of Agreement"]* duly completed will be delivered to you in due course.

Please note that [Name], [Post] is the Government Representative for the purposes of the Contract. In case of general enquiries, please contact [Name] on [Tel. No.].

Please acknowledge receipt of this letter [by signing and returning the duplicate to us].

Yours faithfully,

()

for [The Controlling Officer of the Bureau / Department]

c.c. [user division / section]
[Tender Approving Officer] [Accounts Section]
Contract file

Note: the provision in the [] will have to be changed depending on the requirements of each tender.

* Please delete as appropriate

Sample Letter Notifying Unsuccessful Tenderer

Letterhead of the Bureau / Department

[Name of tenderer]
[Address of tenderer]

[Date]
BY FAX & BY MAIL
Fax No.: [Fax no. of tenderer]

Dear Sir/Madam,

Tender Ref.: []
[Tender Subject]

Thank you for your tender for the above requirement.

I would like to inform you that contract(s) for the above requirement has/have been awarded as follows:

<u>Item</u>	<u>Supplier</u>	<u>Contract Amount</u>
-------------	-----------------	------------------------

You have been unsuccessful in this tender because *your price quoted is higher than the accepted offer(s)./ your offer did not attain the highest combined score./ your offer did not comply with the tender requirement / specifications as per attached sheet(s).

Nevertheless, your participation in this tender is appreciated.

Yours faithfully,

()
for [The Controlling Officer of the Bureau /
Department]

*Delete where inapplicable.

Appendix 9

Sample Letter Notifying Tenderers of the Release of Tender Deposit

Letterhead of the Bureau / Department

[Name of tenderer]
[Address of tenderer]

[Date]
BY FAX
Fax No.: [Fax no. of tenderer]

Dear Sir / Madam,

Release of Tender Deposit
Tender Ref. []
[Tender Subject]

I am pleased to advise you that the above tender deposit of HKD *[amount]* may now be released.

Would you please return to me the ORIGINAL Miscellaneous Receipt No. [receipt no.] as soon as possible.

A cheque for the exact amount of the deposit will then be sent to you by post in [no. of weeks] weeks' time.

Your attention to this matter is very much appreciated.

Yours faithfully,

()
for [The Controlling Officer of the Bureau / Department]

Appendix 10 Sample Letter Notifying Tenderers to Collect Tender Samples

Letterhead of the Bureau / Department

[Name of tenderer]
[Address of tenderer]

[Date]
BY FAX
Fax No.: [Fax no. of tenderer]

Dear Sir / Madam,

Tender Ref. []
[Tender Subject]

With reference to the above tender, I should be grateful if you would arrange to collect the sample(s) you previously submitted for the above tender at the following office on or before [Date]. At the time of collection, please present this letter and bring your company chop for acknowledging receipt.

[Office Address]
[Office hour]
[Contact person and telephone]

Should the sample(s) not be collected by you within the specified period, the sample(s) will be disposed of without further notice to you.

Your attention to this matter is very much appreciated.

Yours faithfully,

()
for [The Controlling Officer of the Bureau/Department]

The above sample(s) has/have been collected by:-

Quantity :

Signature :

Name in
block letters :

Company Chop
Date:

ALL CORRESPONDENCE SHOULD BE ADDRESSED TO THE [CONTROLLING OFFICER OF THE BUREAU / DEPARTMENT]

Appendix 11 Information on Demerit Point Issued to Service Contractors/Sub-contractors (for Contracts which Rely Heavily on the Deployment of Non-skilled Workers)

[proforma for reporting of issue of demerit point as promulgated in FC No.3/2019]

Annex B3 of Part 2 to FC No. 3/2019

[Proforma for reporting of issue of demerit point]
Information on Demerit Point issued to Service Contractors/Sub-contractors
(Financial Circular No. 3/2019)

To : Director of Government Logistics
 [Attn.: SSO(TS)]
 E-mail : hktender@gld.gov.hk
 Period^(*) : _____

Name of Offending Contractor/ Sub-contractor ^(*)	Business Registration No.	Contract No.	Tender/ Quotation Issue Date	Description of Contract	Demerit Point Given on (Date) ^(*)	Nature of Contractual Obligations Breached ^(*)	Name of Department	Department Contact Officer (Name & Telephone No.)	Demerit point under appeal Yes/No
<i>e.g. A Company</i>	<i>01234567-000</i>	<i>X1/2/15</i>	<i>1.6.2015</i>	<i>Provision of Cleansing Services</i>	<i>7.5.2016</i>	<i>Wages</i>	<i>X Department</i>	<i>Mr A CHAN 1234 5678</i>	<i>No</i>

N.B. ^(*) Returns for the period from the 1st day to 15th day of each month should be submitted to GLD on or before the 20th day of the same month. Returns for the period from the 16th day to end of each month should be submitted to GLD on or before the 5th day of the next month.

^(*) Grouped by supplier

^(*) On a chronological order by supplier

^(*) Please specify nature of the contractual obligations breached (i.e. wages/daily maximum working hours/signing of standard employment contracts/wage payment by autopay/gratuity pay/ holiday pay/typhoon allowance).

Signature : _____
 Name : _____
 Department : _____
 Post : _____
 Date : _____

Appendix 12 General Guidelines for the Appeal Mechanism under the Demerit Point System

1. Procuring departments are required to devise a monitoring mechanism to ensure their service contractors and where applicable their sub-contractors comply with the contractual obligations in respect of:

- (i) **wages;**
- (ii) **daily maximum working hours;**
- (iii) **signing of standard employment contracts;**
- (iv) **wage payment by means of autopay** (payment by cheque is only allowed upon termination of employment contract and is made at the request of the workers concerned) to their non-skilled workers (except temporary leave relief workers with an employment period no longer than seven days);
- (v) **statutory holiday pay** for non-skilled workers employed under a continuous contract for not less than one month;
- (vi) **wage** at a rate of at least **150%** to non-skilled workers working when typhoon signal no. 8 or above is hoisted; and
- (vii) **gratuity** payment for non-skilled workers with no less than one year of service under a continuous contract.

2. The following are the general guidelines for the implementation of demerit point system (DPS). Procuring departments should establish their own detailed guidelines having regard to the operational needs of the department.

- (i) When a breach of the aforementioned contractual obligations is identified, or a complaint on breaching of the aforementioned contractual obligations is received, the officer responsible for the management of the contract (i.e., the Investigation Officer (IO)) should immediately carry out an investigation to ascertain the breach. The IO should normally be an officer of a rank not lower than **Executive Officer II or equivalent**.
- (ii) The IO should within [a timeframe specified by the department] report the results of the investigation with

recommendations on the course of action to be taken against the contractor concerned to his **supervisor who should be at least one rank above the IO**.

- (iii) Issue of default notice and the demerit point for the breach of contractual obligations covered under the DPS should be approved by an officer at a rank not lower than **Chief Executive Officer** or equivalent.
- (iv) In the default notice issued to the contractor concerned, the consequence of the default notice and the time allowed for making appeal against the issue of the default notice should be stated. Normally the contractor concerned should be allowed a period of [a timeframe specified by the department] days to make the appeal. The appeal should be made in writing and supported with full justifications.
- (v) The information on demerit point issued should be reported to the Government Logistics Department (GLD) in accordance with paragraph 8 of Annex B of Part 2 to FC No. 3/2019. In case an appeal is received, a remark should be indicated against the demerit point concerned in the return.
- (vi) If an appeal is received within the specified time, the procuring department should set up a panel within [a timeframe specified by the department] days to consider the appeal. The **appeal panel** should normally comprise a **chairman** (at **D1** rank or above) and **at least one member** (at or above the rank of Senior Executive Officer or equivalent). The IO, the supervisor of the IO and the officer approving the issue of the default notice shall not be appointed as member of the appeal panel.
- (vii) The appeal panel will decide on the appeal within [a timeframe specified by the department] days upon the setting up of the panel. The appeal panel should consider all relevant facts surrounding the case, including the representations made by the contractor concerned. Department of Justice should be consulted where necessary. The appeal panel may when necessary extend the time for arriving at a decision. The decision of the appeal panel is final. The contractor and sub-contractor (if any) concerned should be informed of the outcome of the appeal as soon as the decision has been made.

-
- (viii) When it is decided by the appeal panel that the appeal is valid, the procuring department should withdraw the default notice issued and advise GLD to remove the demerit point from the Central Cyber Government Office in accordance with paragraph 9 of Annex B of Part 2 to FC No. 3/2019.

Appendix 13 Checklist for Preparation / Processing of Contract Variations

The points that should be taken into consideration when preparing / processing a contract variation are provided in the following checklist for general reference. The checklist is not a comprehensive or exhaustive one. Bureaux/departments (“b/ds”) shall observe and comply with the provisions set out in Stores and Procurement Regulations (“SPR”), Financial Circulars, Financial Services and the Treasury Bureau Circular Memoranda and Government Logistics Department (“GLD”) Circulars as appropriate, when preparing and processing contract variations.

N.B.: This checklist is not applicable to works or consultancy contracts.

General principles applicable to processing contract variations

- Contract variations should be avoided as far as possible and should normally be used as a stop-gap measure only. They should be kept to the minimum and limited to those that are absolutely essential rather than arranged for expediency.
- If the scope of the contract variation is not provided for in the original contract, in particular those involving material changes to the original scopes of contract requirements, it may amount to a new procurement. To uphold the Government’s procurement principles of transparency, openness and fairness, b/ds should acquire the new procurement through normal tendering / quotation procedures and all interested suppliers / service providers are free to compete.
- An extension of contract or maintenance period may be perceived as a means to favour the existing contractor and bypass the normal tendering procedures, which may lead to bid challenges / complaints from other potential suppliers / service providers.
- For contracts concluded by GLD on behalf of b/ds, b/ds should, unless otherwise agreed by GLD or provided in GLD Circular No. 2/2013 “Minor Contract Variations to the Government Logistics Department Contracts” [or its latest update], submit all proposed contract variations to GLD for review and processing.

A. About the Proposed Contract Variation

Requirement		✓ or N.A
(I) The requirements		
1.	Please state clearly and concisely details of the proposed contract variation, i.e. full description of the items of goods/services involved, their respective quantity, the implementation / delivery schedule, and the variation amount involved.	

Requirement		✓ or N.A
2.	Please provide background information of the contract intended to be varied, i.e. name of the contractor, original approving authority, approval date, approved amount (with breakdown of one-off cost and recurrent costs, if applicable), contract award date, contract date and/or contract duration. If applicable, please confirm that the instruction(s) / suggestion(s) given by the approving authority (e.g. tender board) for contract award and/or previous contract variation(s) have already been taken into account or implemented.	
(II) Contract variation as a means for acquiring the requirements		
1. General		
(a)	Please review and state whether the scope of the proposed contract variation is within the original scope of the contract.	
(b)	Please review whether there is any relevant contract provision providing for the proposed contract variation. If yes, please: (i) quote the applicable contract provision; and (ii) review and confirm that the proposed contract variation is executed within the specified timeframe or deadline for exercising the variation clause.	
(c)	If the proposed contract variation is originally catered for in the contract, please review, justify and state why the requirements should be acquired through exercising the variation clause instead of arranging a new procurement exercise.	
(d)	If the proposed contract variation involves the acquisition of additional requirements or changes which are not included in the contract or are not catered for in the contract, please: (i) fully justify why the additional requirements or changes have to be acquired through variation of an existing contract instead of arranging a new procurement exercise; (ii) review and state when the need for additional requirements or changes arose; and (iii) re. point (ii), if the need should be foreseeable at an earlier stage (e.g. when drawing up the tender requirements / project specifications at the tendering stage or when proposing previous contract variation(s)), provide justification(s) why such additional requirements or changes could not be included in the original tender exercise and/or previous contract variation(s) (if any). N.B. Please consider providing a timeline illustrating the sequence of: (i) preparing the project specifications, invitation of tender and award of contract under the original tender exercise; (ii) seeking approval for previous contract variation(s), if applicable; (iii) planning for the additional requirements or changes covered in the proposed contract variation; and	

Requirement		✓ or N.A
	(iv) any critical activity / event that may lead to the need to acquire the additional requirements or changes through the proposed contract variation.	
2. Applicable to extension of contract period / maintenance period		
(a)	<p>If the proposed contract variation is related to an extension of contract period as a stop-gap measure to ensure continuity of supply of goods and/or services, please:</p> <p>(i) provide reasons why new contract(s) for the required goods and/or services could not be concluded earlier; and</p> <p>(ii) provide the timeline for arranging the tender exercise for the new contract(s) or the current status of the tender exercise for the new contract(s).</p>	
(b)	<p>If the proposed contract variation is related to an extension of maintenance period of an equipment or information technology (IT) system, please:</p> <p>(i) review and confirm that the same level of serviceability could be maintained for the relevant equipment or IT system;</p> <p>(ii) review whether there is any existing contract provision allowing the Government to early terminate the extended maintenance period by giving a prior notice (e.g. three-month notice) to the contractor with a view to having flexibility to curtail the extended maintenance period in case the replacement equipment or IT system could be ready for use earlier than envisaged; [if no, please consider requiring the contractor to agree to the inclusion of an early termination clause to safeguard the Government's interest.]</p> <p>(iii) provide reasons for any delay in the acquisition and/or the implementation of the replacement equipment or IT system;</p> <p>(iv) (if the new contract for acquiring the replacement equipment or IT system is not yet awarded) provide the timeline for arranging the tender exercise for the new contract or the current status of the tender exercise for the new contract; or (if the new contract has already been awarded), state the targeted commissioning / completion date of replacement equipment or IT system;</p> <p>(v) review and state whether there would be any contingency plan or alternative means to ensure the continuity of existing service if the conditions of the equipment or IT system could not be maintained at the same level of serviceability during the extended maintenance period; and/or</p> <p>(vi) review and advise whether it will be feasible to expedite the acquisition of the replacement equipment or IT system or the implementation of the replacement equipment or IT system.</p>	

Requirement		✓ or N.A
	N.B. When the contract or maintenance period is proposed to be extended and the contract deposit was submitted in the form of banker's guarantee or performance bond, b/ds should review the validity of the banker's guarantee or performance bond to ensure that such banker's guarantee or performance bond should cover the extended period. Otherwise, the contractor should be requested to submit a fresh banker's guarantee or performance bond or to extend the validity period of the existing banker's guarantee or performance bond up to the end of the extended period.	
3. Applicable to system compatibility and interchangeability		
(a)	If the proposed contract variation is for reasons of system compatibility or interchangeability, please review and state : (i) (if applicable) whether the Government is being held to ransom by the contractor in that the Government must acquire the items of goods and/or services from the contractor at an unreasonable price; and/or (ii) (if applicable) the contingency to ensure continuity of service in case the contractor fails to supply the required goods and/or services.	
4. Applicable to change of implementation / delivery plan and/or payment schedule		
(a)	If the proposed contract variation leads to a change of the implementation plan of the project / system (e.g. phases / stages to be re-arranged), please review and confirm that: (i) the changes are essential and shall not compromise the interest of the Government or the right to claim for liquidated damages , etc.; (ii) the changes are reasonable and practicable; and/or (iii) the changes should not lead to an extension of the contract / maintenance period of another contract. N.B. B/ds should review the validity of any banker's guarantee or performance bond or advance payment bond to ensure that such banker's guarantee or performance bond or advance payment bond should cover the change in the implementation plan. Otherwise, the contractor should be requested to submit a fresh banker's guarantee / performance bond / advance payment bond or to extend the validity period of the existing banker's guarantee / performance bond / advance payment bond to cover any resultant change in the completion date of the project / system.	

Requirement		✓ or N.A
(b)	<p>If the proposed contract variation leads to a change of delivery and installation of some equipment ahead of the original schedule, please review and state:</p> <ul style="list-style-type: none"> (i) whether the commencement of the warranty period for the equipment and/or the system as a whole will be affected; (ii) if yes to (i), whether additional maintenance or equipment cost may be incurred; (iii) whether the risk of the equipment will be passed to the Government earlier than originally intended; and/or (iv) whether the delivery of the remaining consignment(s), if any, will be affected. 	
(c)	<p>If the proposed contract variation leads to a change of the payment schedule, please review and state:</p> <ul style="list-style-type: none"> (i) the revised payment schedule is no less favourable than the original one; (ii) the revised payment schedule ties in with specified deliverables / implementation stage to be accepted by the Government; and (iii) if advance payment is involved, advance payment bond or other safeguards are in place to protect the Government's interest. <p>N.B. If advance payment bond is involved, b/ds should review the validity of the advance payment bond to ensure that such bond covers the change(s).</p>	
(III) The contractor's proposal		
1.	Please review and confirm that the contractor has submitted a contract variation proposal confirming its agreement to deliver the variation requirement(s).	
2. Contract Conditions		
(a)	Please review and confirm that the contractor has agreed to adhere to the original contract provisions when executing the contract variation requirement(s).	
(b)	<p>If (i) the contractor has submitted any counter-proposal(s) to existing contract provisions or has introduced new contract provision(s), and (ii) b/ds propose to accept the counter-proposal(s) and/or new contract provision(s), please state whether any negotiations were made and provide full justifications (with advice from policy bureau or Department of Justice, when necessary) for their acceptance.</p> <p>N.B. For contracts concluded by GLD on behalf of b/ds, <i>the authority for conducting any negotiation vests with GLD staff</i>. B/ds should, when submitting the application for the proposed contract variation, recommend whether any negotiation with the contractor on the counter-proposal(s)</p>	

Requirement		✓ or N.A
	and/or new contract provision(s) should be conducted. B/ds should also include in its application the baseline for the negotiation for GLD's consideration. If negotiation is considered not required, b/ds are required to provide full justifications (with advice from policy bureau or Department of Justice, when necessary) for their acceptance.	
3. Contract Price		
(a)	<p>If the contract has a price adjustment clause which specifies a mechanism in which price adjustment will be made accordingly (e.g. annually with reference to movements of the Consumer Price Index), such change in contract price is considered as a result of the adjustment mechanism which has been envisaged under the contract, instead of a contract variation. For contracts with a non-discretionary price adjustment mechanism, the "original value" of the contract as stated in SPR 520(b) has included the tendered sum cum price fluctuation adjustment. In other words, the implementation of price adjustment clause in the contract is not deemed to "increase" the "original value" of the contract. The Controlling Officer (or a designated officer of appropriate rank) may approve any number of such price adjustments according to SPR 520(b). B/ds are reminded to exercise due care in implementing the price adjustment clause and keep proper and separate records of the concerned adjustments.</p> <p>If the contract does not provide a price adjustment mechanism, (b) – (d) below should be followed.</p>	

Requirement		✓ or N.A
(b)	<p>Please review and confirm that the rates / prices applicable to the proposed contract variation:</p> <ul style="list-style-type: none"> (i) are based on the rates and prices quoted in the contract; (ii) are considered to be fair and reasonable [please also provide the basis (e.g. the inflation trend, the foreign exchange rate fluctuation, market rates or contract prices for similar items under other government contracts) on which such conclusion is arrived at]; and (iii) represent the best value-for-money purchase for the Government. 	
(c)	<p>If the proposed rates/prices are not included in the original contract, please review and advise:</p> <ul style="list-style-type: none"> (i) the reasons why such rates / prices are considered no less favourable than those quoted in the contract; and (ii) the reasons why such rates / prices are considered to be fair and reasonable [please also provide the basis on which such conclusion is arrived at]. 	
(d)	<p>If applicable, please review whether any price negotiation should be made. If price negotiation has been made, please provide full justifications for accepting the original or revised rates / prices.</p> <p>N.B. For contracts concluded by GLD on behalf of b/ds, <i>the authority for conducting any negotiation vests with GLD staff.</i> B/ds should, when submitting the application for proposed contract variation, recommend whether any negotiation with the contractor on the proposed rates/prices (irrespective of whether they were the same as those quoted in the original contract) should be conducted. If negotiation is considered required, b/ds should include in its application the baseline for the negotiation for GLD's consideration.</p>	

Requirement		✓ or N.A.
4. Manpower resources		
(a)	If the proposed contract variation involves the provision of additional manpower resources by the contractor, please review and state that the level of staff resources and the number of man-hours (man-days / man-months) deployed are reasonable and commensurate with the scale of the variation requirement(s).	

B. Previous / Further Contract Variation(s)

Requirement		✓ or N.A.
(I) Previous Contract Variation(s)		
1.	If the contract has been varied previously, please list out the previous contract variation(s) in a summary table with details of each variation including brief description, variation amount, approving authority and approval date, etc.	
2.	Where applicable, please review and state whether the proposed contract variation does have relevance to the previous variation(s). If yes, please provide details.	
(II) Further Contract Variation(s)		
1.	Please review whether there may be any other proposed contract variation(s) in the pipeline or in the foreseeable future. If yes, please state why they cannot be consolidated in the current variation proposal for the consideration of the approving authority.	

C. Implications / Impacts of the Contract Variation

Requirement		✓ or N.A.
1.	Please critically review whether the proposed contract variation may adversely affect the execution or monitoring of the contract [for example, during the implementation of an IT system, the inclusion of additional system features / functions may result in a postponement of the system completion date]. If yes, please specify the details as well as the measures that will be taken to mitigate any possible adverse impacts and to safeguard the Government's interest.	
2.	Please review whether the proposed contract variation may result in over-reliance by the Government on a single contractor in delivering certain essential goods and/or service to the Government.	
3.	Please review whether the proposed contract variation: (i) may have implications or impact on the execution or implementation of other contract(s) or project(s) on hand; and/or (ii) may give the contractor undue advantage over other potential suppliers when bidding for contract(s) of other	

Requirement		✓ or N.A.
	<p>system(s) / project(s).</p> <p>If yes to any of the above, please provide details on how to mitigate the adverse implications / impact or to minimise the undue advantages given to the contractor.</p>	

D. Supporting Documentation

Requirement		✓ or N.A.
(I) Policy Support / Relevant Endorsement		
1.	Where applicable, please confirm that policy support / endorsement has been obtained from the relevant bureaux.	
2.	Where applicable, please confirm that endorsement from the appropriate departmental authority, e.g. Controlling Officer, designated officers, Project Steering Committee / Maintenance Board, has been obtained for the proposed contract variation.	
3.	<p>If any expert department(s) / division(s), e.g. Electrical & Mechanical Services Department, Office of Government Chief Information Officer or Information Technology Management Unit of the relevant b/ds, are engaged in the contract execution, please confirm that the views and comments of the expert department(s) / division(s) on the proposed contract variation have been sought and taken into consideration.</p> <p>Please also state clearly the roles and responsibilities of the expert department(s) / division(s) in the contract.</p>	
(II) Legal Advice		
1.	<p>Please state whether legal advice from the International Law Division (applicable if the proposed variation requirement is subject to the Agreement on Government Procurement of the World Trade Organization) and/or Commercial Unit (applicable if there are changes in the contract provisions and/or schedules) of Department of Justice has been sought on the proposed contract variation.</p> <p>If yes, please summarise their advice and confirm that the legal advice (if any) has already been taken into account.</p>	

E. Contractor's Performance

Requirement		✓ or N.A.
1.	<p>Please review and confirm that the performance of the contractor (including its performance in previous contract variation(s), if any) is satisfactory.</p> <p>N.B. If the performance of the contractor is found unsatisfactory, request for additional requirement(s) or extension of contract / maintenance period by way of contract variation would normally not be entertained.</p>	

	Requirement	✓ or N.A.
2.	If the project / system under the contract is still under development, please clearly state the basis on which the contractor's performance is being assessed.	
3.	If the contractor's performance is considered unsatisfactory or is deteriorating but b/ds recommend the processing of the proposed contract variation, please provide justifications for the proposal and advise the measures that will be put in place to monitor the contractor's performance.	

F. Contract Deposit

	Requirement	✓ or N.A.
1.	If additional contract value will be awarded as a result of the proposed contract variation, please review and ensure that the contractor would be requested to submit additional contract deposit so as to safeguard the contractor's due performance.	

G. Variation Amount and Funding

	Requirement	✓ or N.A.
1.	Please summarise the change in the contract value in a table showing (a) original contract amount, (b) previous contract variation amount(s) (if any), (c) current proposed contract variation amount, (d) cumulative variation amount, and (e) revised total contract amount, with percentage of the change(s) in the contract value. N.B. Re. (b), (c) and (d), if the variations have led to a decrease in contract value in one area while an increase in another, please show the reduced and increased amount separately.	
2.	Please confirm the availability of funds for the proposed contract variation and provide the account code chargeable.	
3.	Where applicable, please review and confirm that the payment method / schedule for the proposed contract variation is the same as that provided in the original contract.	

H. Declaration of Interest

	Requirement	✓ or N.A.
1.	Please state that all officers involved in preparing and processing the proposed contract variation and negotiation (if any) have declared in accordance with SPR 186 that there is no conflict of interest (actual, potential or perceived) for them to take part in the process.	

I. Level of Approving Authority

	Requirement	✓ or N.A.
1.	Please verify and quote the relevant approving authority for the proposed contract variation in accordance with the provisions of SPRs.	

	N.B. When quoting the authority for approving a contract variation, b/ds should take note of the provision in SPR520(d) which stipulates that “for a contract that involves variations leading to a decrease in contract value in one area and an increase in contract value in another during the contract period, only the variation that leads to an increase in contract value will count under the accumulated value of the contract for determining the appropriate level of authority for seeking approval for contract variation as specified in Appendix V(B).”	
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